



# TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904  
Telephone: (207) 475-1329 Fax: (207) 439-6806

November 23, 2015

Council Chambers

Kittery Town Council  
Regular Meeting  
7:00 p.m.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes – 11/9/15 Regular Meeting
8. Interviews for the Board of Appeals and Planning

Planning Board:

- Karen Kalmar – re-appointment until 11/30/18
- Mark Alessee – re-appointment until 11/30/18
- Brett Costa – appointment until 11/30/18 (to replace David Lincoln who is not re-applying)

9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials

10. PUBLIC HEARINGS

(110315-1) The Kittery Town Council moves to hold a public hearing and hereby ordains amendments to Title 4 Boards, Commissions and Committees of the Kittery Town Code.

11. DISCUSSION

- a. Discussion by members of the public (three minutes per person)
- b. Response to public comment directed to a particular Councilor
- c. Chairperson's response to public comments

12. UNFINISHED BUSINESS

13. NEW BUSINESS

- a. Donations/gifts received for Council disposition

b. (110315-2) The Kittery Town Council moves to approve proposed revisions to the Facility Use Policy for the Kittery Community Center at Frisbee Common.

c. (110315-3) The Kittery Town Council moves to discuss the offer of a conservation easement gift of land to the Town by owner Stephen A. Hynes Real Property Trust Agreement.

d. (110315-4) The Kittery Town Council moves to approve the disbursement warrants.

e. (110315-5) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Port Authority to interview William Pike for his appointment to that board until 8/31/20.

f. (110315-6) The Kittery Town Council moves to approve and sign the policy on Treasurer's Disbursement Warrants for Employee Wages and Benefits, designating three Councilors, who may review, approve and sign such warrants, to expire on November 30, 2016.

g. (110315-7) The Kittery Town Council moves to approve and sign the policy on Treasurer's Disbursement Warrants for Municipal Expenses, designating three Councilors who may review, approve and sign such warrants, to expire on November 30, 2016.

h. (110315-8) The Kittery Town Council approve and sign the School Department policy on General Disbursement Warrants for Educational Expenses, designating three Councilors who may review, approve and sign such warrants, to expire on November 30, 2016.

i. (110315-9) The Kittery Town Council moves to approve and sign the School Department policy on Disbursement Warrants for School Employee Wages and Benefits, designating three School Committee Members who may review, approve and sign such warrants, to expire on November 30, 2016.

14. COUNCILOR ISSUES OR COMMENTS

15. COMMITTEE AND OTHER REPORTS

- a. Communications from the Chairperson
- b. Committee Reports

16. EXECUTIVE SESSION

(110315-6) The Kittery Town Council moves to go into executive session in accordance with:

- 1 M.R.S. 405 (6) (C) with the Town Manager and Commissioner of Public Works to discuss land acquisition and;
- 1 M.R.S. 405 (6) (D) with the Town Manager to discuss labor negotiations.

17. ADJOURNMENT

Posted: November 19, 2015





# TOWN OF KITTERY

Office of the Town Manager

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Nancy Colbert Puff  
Town Manager

## Town Manager's Report to the Town Council November 23, 2015

1. **Land and Water Conservation Fund Grant** – As discussed at Council's last session, I submitted a grant request to fund improvements to Emery Field on November 19<sup>th</sup>. The final application was for \$187,000.
2. **Fall Paving Program** – Residents have inquired about paving on South Eliot and Cutts Road, wondering why the "breakdown lanes" have not been included as part of the work. A final "curb to curb" overlay is planned to occur in the spring.
3. **Sewer Extension Project** – A few trenches on Route 236 have settled, and are targeted to be filled in the next couple of weeks.
4. **Wood Island** – I am working with Sam Reid of WILSSA to prepare a concession agreement and revised repair agreement for Council's consideration in December. I have strong received letters of support for WILSSA's plans from potential partners which include the Gundalow Company and Portsmouth Harbor Cruises. Key items we are discussing are the term of the agreement (WILSSA has proposed 30 years), allowed uses, and conditions in the event of non-performance.
5. **Surplus Property** – The Town has several surplus items for which it seeks sealed bids. A list of these items can be seen on our web site under "News and Announcements."
6. **Portsmouth Naval Shipyard (PSNY) Bridge 1 project** – PSNY is at a key juncture in this project which required closure of Gate 1 on 2 successive Fridays. Traffic backups were serious, and PSNY has been in communication with the Town and is taking several measures to mitigate the issue.
7. **Personnel** – We are hiring for several positions which can all be found under our Employment Opportunities section of our web site.

As always, if you have any questions or concerns prior to the meeting, please do not hesitate to contact me.  
Thank you.

Respectfully Submitted,

Nancy Colbert Puff

1. Call to Order

Chairperson Thomson called the meeting to order at 7:00 p.m.

2. Introductory

Chairperson Thomson read the introductory

3. Pledge of Allegiance

Chairperson Thomson led those present in the Pledge of Allegiance

4. Oath of Office to Newly Elected Officials

Town Clerk Place administered the Oath of Office to Councilor Thomson and Councilor Beers and Councilor Dennett.

5. Roll Call

Answering the roll were Chairperson Jeffrey Thomson, Vice Chairperson Russell White, Councilors Charles Denault, Frank Dennett, Kenneth Lemont, Gary Beers and Judy Spiller.

6. The Kittery Town Council moved to elect a Chairperson for the ensuing year.

**COUNCILOR SPILLER MOVED TO ELECT COUNCILOR WHITE AS CHAIRPERSON FOR THE ENSUING YEAR, NO SECOND.**

**COUNCILOR DENAULT MOVED TO ELECT COUNCILOR BEERS AS CHAIRPERSON FOR THE ENSUING YEAR, SECONDED BY COUNCILOR LEMONT.**

**COUNCILOR WHITE MOVED TO ELECT COUNCILOR LEMONT AS CHAIRPERSON FOR THE ENSUING YEAR, SECONDED BY COUNCILOR SPILLER.**

Councilor Lemont thanked the Council and stated that he would like to be removed from consideration for the position of Chairperson.

**COUNCILOR DENAULT MOVED TO CEASE ALL NOMINATIONS, SECONDED BY COUNCILOR BEERS, WITH ALL IN FAVOR MOTION PASSED 7/0/0.**

**A VOICE VOTE WAS TAKEN TO ELECT COUNCILOR BEERS AS CHAIRPERSON FOR THE ENSUING YEAR WITH COUNCILOR SPILLER OPPOSED. MOTION PASSED 6/1/0.**

7. The Kittery Town Council moved to elect a Vice Chairperson for the ensuing year.

**COUNCILOR BEERS MOVED TO ELECT COUNCILOR DENAULT FOR VICE CHAIRPERSON FOR THE ENSUING YEAR, SECONDED BY COUNCILOR LEMONT.**

COUNCILOR SPILLER MOVED TO ELECT COUNCILOR WHITE FOR VICE  
CHAIRPERSON FOR THE ENSUING YEAR, SECONDED BY COUNCILOR THOMSON.

A ROLL CALL VOTE WAS TAKEN TO ELECT COUNCILOR DENAULT FOR VICE  
CHAIRPERSON FOR THE ENSUING YEAR WITH COUNCILORS SPILLER, WHITE  
AND THOMSON OPPOSED 4/3/0.

A ROLL CALL VOTE WAS TAKEN TO ELECT COUNCILOR WHITE FOR VICE  
CHAIRPERSON FOR THE ENSUING YEAR WITH COUNCILORS DENAULT,  
DENNETT, BEERS OPPOSED AND COUNCILOR LEMONT OBSTAINING. THE  
MOTION FAILED 3/3/1.

THE MOTION ON THE FIRST NOMINATION TO ELECT COUNCILOR DENAULT FOR  
VICE CHAIR PASSES 4/3/0.

8. Agenda Amendment and Adoption

Councilor Thomson noted that item 17 needs to be changed to Councilor's Issues and Comments,  
which was listed as Committee and Other Reports; Committee and Other Reports will then be item 18;  
Executive Session will be item 19; and Adjournment will be item 20.

Chairperson Beers amended item 11 Interviews for the Board of Appeals and Planning to be The  
Kittery Town Council moves to accept the resignation of Gary Beers from the Board of Appeals; and item  
18 Kittery Town Council moves to enter executive session for the sole and precise purpose of addressing  
personnel and legal matters in accordance with 1 M.R.S. §405 (6) (A) and (6) (E). Councilor Dennett  
noted that executive session will be correctly listed as the new item 19. Councilor Thomson asked  
Chairperson Beers clarification on the changes to item 11. Chairperson Beers clarified that item 11 is  
being changed to reflect the resignation of Gary Beers from the Board of Appeals in order to open a seat  
prior to appointments of applicants. Councilor Thomson noted that the letter of resignation is dated  
November 10<sup>th</sup>. Chairperson Beers instructed the Town Clerk Place to change the date on the signed copy  
to November 9<sup>th</sup>.

The agenda was accepted as amended without objection.

9. Town Manager's Report

Town Manager Puff noted that in the Council packets is a report concerning an application to the  
Land and Water Conservation Fund which is due November 20<sup>th</sup>. This is an aggressive timeline for  
matching grant funds to enable the construction of multipurpose fields and pathways at Emery Field. If  
the Town is successful with the application, the grant agreement may be in hand by the summer of 2016,  
which would allow the match to include FY '17 funds. Town Manger Puff requested that she be allowed  
to offer an update on this when it is discussed later in the meeting.

Town Manager Puff stated that the Library Committee has met seven times to explore questions  
that the Council posed in June. The minutes are posted on the Town Manager's webpage. Town Manger  
Puff revisited the questions that Council asked concerning where the facility will be located on the site,  
what the footprint and square footage will be, how it will be accessed, what the impact will be on the  
neighborhood and the library's operational budget, and what will be the future disposition of the Rice and  
Taylor buildings. The Committee has made progress on understanding these issues and the neighborhood

attended one of the meetings to express their concerns. There is still work to be done on evaluating size and square footage and questions D & E have yet to be addressed.

Town Manager Puff stated that she is seeking bids for the replacement of the Stafford School building's failed roof and hopes to have a signed agreement this week.

Town Manager Puff stated that in October the Town received eleven prequalification packages for potential submission of bids for Wood Island for the Brownfield project and the restoration project. The packages are being reviewed and a bid package is being developed for qualified firms to use this winter.

Town Manager Puff noted that Northeast Housing (Admiralty Village) has decided to renew their five year agreement with the Town which pays for fire, police and emergency services. Beginning November first their fee is \$1,427.00 per housing unit per year, which escalates from 1 to 3% based on CPI and is due to expire October 31<sup>st</sup>, 2019.

Town Manager Puff was pleased to announce that the Sewer Department is once again the recipient of a safety grant applied through the Maine Municipal Risk Management Program for the purchase of traffic safety equipment in the amount of \$1,322.23.

Town Manager Puff announced that she and the Eliot Town Manager Dana Lee have decided to advertise for a joint replacement for retiring Police Chief Ted Short. She noted that they will assemble an advisory committee to assist in evaluating candidates that will include representation from each community and their respective departments. They expect to advertise for this position within the next month.

Town Manager Puff gave thanks for improvements that the Department of Public Works. They have restriped the fog line along John Paul Jones Park to a width that better accommodates bicycle travel and they have completed the relocation of a cross walk at the intersection of Government and Walker Streets to improve safety. Both improvements were recommended by the community as part of the Foreside Forum.

Town Manager Puff informed the Council that on November 4<sup>th</sup>, she attended the J1 Seacoast Coalition Conference that was hosted at the community center. Fire Chief Dave O'Brien, CEO Bob Marchi and Chairperson Thomson were also in attendance. The focus was to gain a better understanding of the J1 Program in Kittery and Portsmouth and to brainstorm solutions to housing and transportation issues. Chief O'Brien delivered an excellent presentation on safety concerns and regulations as they pertain to housing types. Town Manager Puff expects to continue the discussion with area employers and the City Manager in Portsmouth to identify strategies to improve on these issues and improve the program which supports our local businesses. The conference will be played on Channel 22 in the coming weeks.

Town Manager Puff noted that on November 12<sup>th</sup> it will be the two year anniversary of her being The Town of Kittery's Town Manager. She thanked the community, the department heads and the Council for their support and assistance in helping her to perform her job.

Councilor Spiller asked Town Manager Puff what the percentage of time would be in terms of level of effort for Kittery and Eliot with the shared police chief. Chief Ted Short approached the podium and commented that it has not been tracked, Eliot is a smaller town and it changes from day to day but it is his opinion that it is the 60-40 split that Kittery and Eliot agreed to in the contract.

Councilor Thomson added to Town Manager Puff's comments concerning the J1 Conference that was held last week regarding the J1 on student workers that are here primarily during the summer months. A representative from the State Department in said in her presentation that there was a thirty percent increase in the numbers of these workers in the Portsmouth and Kittery area. That number is expected to increase in the coming years. A restaurant owner at the conference added that there were an additional 1,700 positions that were not filled during the tourist season. The Kittery and Portsmouth communities will be facing these issues primarily in housing and transportation that need to be addressed. There will be additional meetings this winter. Councilor Thomson thanked Fire Chief O'Brien who was the only official from either community to make a presentation. Councilor Thomson added that Chief O'Brien did an excellent job and his presentation made the city officials especially in Portsmouth aware of what this phenomenon is for our area.

10. Acceptance of Previous Minutes – 6/8/15 Regular Meeting, 10/26/15 and 11/2/15 Special Meetings

Chairperson Beers stated that he will abstain as he was not present for these meetings.

The minutes were accepted as amended.

11. Interviews for the Board of Appeals and Planning

**COUNCILOR DENAULT MOVED TO ACCEPT THE RESIGNATION OF GARY BEERS FROM THE BOARD OF APPEALS, SECONDED BY COUNCILOR SPILLER.**

Councilor Dennett questioned the necessity to have this motion when being sworn to the duties of the Town Council automatically eliminates the person from membership on the Board of Appeals according to the Town Charter.

**COUNCILOR SPILLER WITHDREW HER SECOND ON THE MOTION.**

Chairperson Beers noted that under councilor's comments under the Board of Appeals applicant interview for Mr. Charles H. Denault, III to change the prospective appointment term to 12/1/2017 to replace Gary Beers.

Board of Appeals:

- Sean Regan - until 3/25/16 (to fill Vern Gardner's unexpired term)

Sean Regan approached the podium to introduce himself and express his interest in the Board of Appeals. Mr. Regan explained that he has lived in Kittery for a couple of years. He is involved in commercial real estate and is familiar with local municipal zoning ordinances and what it takes to get a variance. He stated that he would like to get involved with the Town and that the Board of Appeals would be a good place to start.

Councilor White asked Mr. Regan how he would deal with potential conflicts of interest.

Mr. Regan responded that if he was involved in any project that came before the Board of Appeals, he would dismiss himself from voting.

Councilor Lemont thanked Mr. Regan for wanting to come forward and serve.



**COUNCILOR THOMSON MOVED TO APPOINT MR. SEAN REGAN TO A TERM ON THE BOARD OF APPEALS EXPIRING ON 3/25/2016, SECONDED BY COUNCILOR LEMONT.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0**

- Charles H. Denault, III – until 3/1/18 (to replace Brett Costa whose 3<sup>rd</sup> term expired 3/1/15)

Charles Denault, III approached the podium to introduce himself and express his interest in the Board of Appeals.

Councilor Thomson questioned the appropriateness of changing the date of term expiration to 12/1/2017 or if it should remain as printed on the agenda as it was not changed at the time of agenda amendment and adoption.

Chairperson Beers stated that the 3/1/18 term date will remain.

Mr. Charles Denault introduced himself and explained that he has lived in Kittery his entire life and is the founder of an on-line market place for private jets. He noted that he studied biology at the University of New Hampshire which taught him how to think on a systems level. He has begun to learn code and is reading it. He understands that the decision of one person on a board of seven can have far reaching implications in Kittery. He feels that due process is required in any form of government. Mr. Denault stated that he wants to serve on the Board of Appeals to make sure that any voice in the Town will be heard.

Councilor Thomson asked Mr. Denault to clarify what online company he is the founder of. Mr. Denault answered that he is founder of Simple Charters.com, which he easiest way to charter private jets.

**COUNCILOR THOMSON MOVED TO APPOINT MR. CHARLES H. DENAULT, III TO A TERM ON THE BOARD OF APPEALS EXPIRING 11/9/18 TO REPLACE BRETT COSTA WHO'S THIRD TERM EXPIRED, SECONDED BY COUNCILOR LEMONT.**

Councilor Denault argued that there are two vacancies on the Board of Appeals and that the chairperson of the Board has not been replaced yet.

Chairperson Beers clarified the motion to now read to appoint Charles H. Denault, III to a term to The Board of Appeals expiring 11/9/18 to replace Brett Costa whose third term expired 3/1/15.

**CHAIRPERSON BEERS RULED THE MOTION OUT OF ORDER BECAUSE THE COUNCIL JUST APPOINTED MR. SEAN REGAN IN A DIFFERENT FRAME IN A TRADITIONAL PRACTICE TO AN EXISTING TERM EXPIRING, AND REQUESTED A NEW MOTION.**

**COUNCILOR THOMSON CHALLENGED THE RULING OF THE CHAIRPERSON, COUNCILOR SPILLER SECONDED.**

**A ROLL CALL VOTE WAS TAKEN ON THE RULING WITH COUNCILORS SPILLER, LEMONT, THOMSON AND WHITE OPPOSED. THE RULING DOES NOT CARRY 3/4.**

Councilor Dennett expressed concern that the Board of Appeals will be a board of six if Mr. Charles Denault, III is appointed to take the place of Mr. Brett Costa. Councilor Thomson disagreed and felt the Council should proceed with the original motion.

COUNCILOR DEWALT MADE A MOTION TO AMEND THE ORIGINAL MOTION TO APPOINT MR. CHARLES H. DENAULT, III TO A TERM ON THE BOARD OF APPEALS EXPIRING 12/1/17 TO REPLACE GARY BEERS, SECONDED BY COUNCILOR DENNETT.

A ROLL CALL VOTE WAS TAKEN ON THE AMENDMENT TO THE MOTION WITH COUNCILORS SPILLER, THOMSON AND WHITE OPPOSED. THE MOTION PASSES 4/3/0.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION AS AMENDED TO APPOINT MR. CHARLES H. DENAULT, III TO A TERM ON THE BOARD OF APPEALS EXPIRING 12/1/17 TO REPLACE GARY BEERS WITH COUNCILORS THOMSON, WHITE AND SPILLER OPPOSED. THE MOTION PASSES 4/3/0.

Councilor Dennett asked that Chairperson Beers remind the public that there is still a vacancy on the Board of Appeals.

12. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials

(110215-1) The Kittery Town Council moves to authorize, through an alternative procurement method, in accordance with Sec. 3.2.7 of the Kittery Town Code, for the Purchasing Agent /Town Manager to enter into an agreement with Two Way Communications of Newington, NH, for the purchase and installation of the public safety communications equipment listed in the proposal.

**COUNCILOR THOMSON MOVED TO AUTHORIZE THE PURCHASING AGENT/TOWN MANAGER TO ENTER INTO AN AGREEMENT AS STATED, SECONDED BY COUNCILOR SPILLER.**

Fire Chief Dave O'Brien and Chief of Police Ted Short approached the podium to answer questions from Councilor Dennett. Councilor Dennett asked if the cost of the proposal included setup and testing. Chief O'Brien answered that it does include full installation, testing and commission. Councilor Dennett asked what happens with the old equipment. Chief O'Brien said it will be removed, decommission and disposed of properly. Councilor Dennett asked if the new system will be compatible as a regional center for southern York County. Chief O'Brien assured the Councilor that it will be compatible with other radio systems in Berwick, South Berwick and Eliot. Chief O'Brien added that the equipment is state-of-the-art. Councilor Dennett stated that he was pleased to find that there are funds sufficient to cover the cost of the equipment and requested that Council be provided with a copy of the Agreement. Chief O'Brien stated that a better term would be proposals for the radios and consoles and alarm systems and those proposals are in the Council packets.

There was discussion about the most appropriate word to replace the word "agreement" in the main motion.

**COUNCILOR THOMSON MADE A MOTION TO CHANGE THE WORDS "ENTER INTO AN AGREEMENT" IN THE MAIN MOTION TO "ENTER INTO PURCHASE ORDERS", SECONDED BY COUNCILOR SPILLER.**

Councilor Dennett would like it noted that in not going out to bid the council is authorizing an alternate purchasing procedure.

Councilor Thomson thanked Chief O'Brien and Chief Short for their work and Town Manager Puff for her guidance to them. Chairperson Beers also added his thanks for their work and their sterling report.

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

13. PUBLIC HEARINGS - None

14. DISCUSSION

a. Discussion by members of the public (three minutes per person)

Susan Emery of 5 School Lane, Kittery Point approached the podium and introduced herself. Ms. Emery gave an account of how in 2006 she was part of a group from the village that prevented Emery Field from being covered with a new recreation center. They wanted to keep the original intent from the Plan for the Village as an open space for the small houses that did not have any open space. She is not opposed to using Emery Field as an athletic venue but requested that there be meetings with the people of the village to consider their input. She is open to athletic venue or even a tennis court but is concerned about more parking. She thanked the Council and asked that the Council please be respectful of the original intent for Emery Field and also have it well publicized meetings.

Donald Allen Kerr of 4 Colonial Road approached the podium and introduced himself. Mr. Kerr asked that the Council keep the big picture in mind concerning the overall athletic field project costing over \$8.5 million even though the project will be tackled piece meal, field by field. He asked that potential grant money be looked into. He also asked if the \$2.1 million for the two new fields for KCC that are in the plan is over and above the capital funding that has already been approved for KCC. He is wondering how much of KCC revenue has gone back into the Town's general fund. Mr. Kerr suggested that it would be easier for people to find the Library Committee Minutes under the general minutes portion of the website rather than under the Town Manager's website.

Tania Marino of 7 Old Ferry Lane approached the podium and introduced herself. She is a founding member of the Kittery Athletic Field Improvement Committee. Ms. Marino gave an overview of the Committee and their focus on the various fields. Ms. Marino asked that the Council approve the application for a grant from the Land and Water Foundation. She added that the goals and mission of the Committee is to create and better utilize open space.

b. Response to public comment directed to a particular Councilor

Chairperson Beers noted that the \$2.1 million proposed for the two new fields for KCC is above the \$6 million approved for that facility. He added that he will ask Town Manager Puff to examine the placement of materials on the website. The athletic field's project will be a large subject for quite some time.

c. Chairperson's response to public comments

15. UNFINISHED BUSINESS - None.

16. NEW BUSINESS

a. Donations/gifts received for Council disposition. None.

b. (110215-2) The Kittery Town Council moves to adopt its current rules for the ensuing year.



**COUNCILOR DENNETT MOVED TO ADOPT RULES FOR THE ENSUING YEAR WITH THE AMENDED DATE OF JANUARY 27, 2014, SECONDED BY COUNCILOR SPILLER.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

c. (110215-3) The Kittery Town Council moves to appoint Council Members to On-going, Standing, Ad hoc and Council Committees.

White noted that the Wood Island Committee has been abolished and asked that it be removed. Councilor Dennett suggested that appointments need to be an item by item process.

Chairperson Beers and Councilor Thomson would like to serve on the CIP Committee. As there is one seat for a Council Member on the CIP Committee, Chairperson Beers will withdraw and Council Member Thomson will serve on the Committee.

Councilor White would like to continue to serve on the Comprehensive Plan Update Committee.

Councilor Denault would like to continue to serve on the Economic Development Committee.

Chairperson Beers would like to continue to serve, for the ninth year on the Eliot Sewer Committee. He will follow up after the meeting to see if the Committee needs to continue or disband until needed at a later date.

Mr. Denault offered to serve on the Kittery Community Center Board of Directors. Councilor Thomson noted that he has been re-appointed until March 26, 2018.

Chairperson Beers suggested that appointment to the Mary Safford Wildes Trust Committee be postponed because Title 4 of Boards Commissions and Committees has an ordinance revision recommendation upcoming which could include any individual Council Member to serve. Councilor Thomson suggested that Council consult the Town attorney to review Ms. Safford Wildes will. Councilor Dennett advised that as it currently stands, the chairperson is required to serve on this committee.

Councilor White currently serves on the Open Space Advisory Committee and will continue.

Councilor Denault would like to continue to serve on the Recycling Scholarship Selection Committee.

Councilor Spiller will continue to serve on the Safford School Preservation Committee.

Chairperson Beers will ensure that the two positions on the Shared Services Committee are listed as ex officio.

Councilors Dennett, Councilor Lemont will serve on the Warrant Review Municipal Expense Committee with Chairperson Beers serving as first alternate.

Councilor Thomson, Councilor White will continue to serve on the Warrant Review Municipal Employees Wages and Benefits Committee. Councilor Beers will serve as third alternate.

Councilor Lemont, Councilor Thomson and Councilor Spiller will serve on the Warrant Review School Expense Committee.

The Warrant Review School Employee Wages and Benefits Committee is determined by the school committee and will be provided to Council at a later date.

Councilor Beers stated that he would like to be appointed to the Ordinance Review Committee and requested that another Councilor also serve. Councilor Denault will also serve.

d. (110215-4) The Kittery Town Council moves to act on the Town Manager's salary from November 12, 2015 through November 12, 2016.

**COUNCILOR THOMSON MOVED THAT THE KITTERY TOWN MANAGER RECEIVE AN ADJUSTMENT IN WAGES OF 2.25% EFFECTIVE NOVEMBER 12, 2015 FOR THE NEXT TWELVE MONTH PERIOD, SECONDED BY COUNCILOR SPILLER.**

Councilor Denault suggested that the evaluation process has not been completed and believes an increase is premature at this point. Councilor White stated that the efforts of Town Manager Puff need to be recognized in an increase in her compensation. Councilor Dennett stated that he will vote no on the motion as there has already been an automatic increase in the budget. Councilor Spiller and Councilor Thomson noted that council members have already agreed that they did not want another executive session to continue the Town Manager's evaluation. Councilor Thomson also noted that the increase has already been budgeted in June. Councilor Lemont suggested that a compensation study be undertaken.

**COUNCILOR DENNETT MOVED TO POSTPONE ACTING ON THE TOWN MANAGER'S SALARY UNTIL THE COUNCIL MEETING ON JANUARY 11, 2016, SECONDED BY COUNCILOR DENAULT.**

Chairperson Beers will be sure that appropriate information is collected and provided to Council Members prior the January 11, 2016 meeting. He also noted that he has not taken part in the discussion as he was not present during the period of the Town Manager's performance and has not reviewed any of the materials and therefore would have abstained.

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

e. (110215-5) The Kittery Town Council moves to approve the disbursement warrants.

**AS ALL WARRANTS ARE IN ORDER, COUNCILOR THOMSON MOVED TO APPROVE THE TOWN WARRANTS IN THE AMOUNT OF \$627,877.93, SECONDED BY COUNCILOR DENAULT.**

**A VOICE VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

f. (110215-6) The Kittery Town Council moves to authorize the Town Manager to close departments with the exception of essential personnel, the day after Thanksgiving, November 27, 2015, with the understanding that employees will use their personal accumulated time.

**MOVED BY COUNCILOR THOMSON, SECONDED BY COUNCILOR DENAULT TO CLOSE THE TOWN DEPARTMENTS AS STATED IN ITEM F.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

g. (110215-7) The Kittery Town Council moves to schedule a public hearing on proposed amendments to Title 4 Boards and Committees of the Kittery Town Code.

**MOVED BY COUNCILOR WHITE, SECONDED BY COUNCILOR DENAULT TO SCHEDULE  
A PUBLIC HEARING AS STATED IN ITEM G.**

Councilor White noted that this will take place during the next meeting of November 23, 2015.

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/1/0.**

h. (110215-8) The Kittery Town Council hereby resolves to authorize the Town Manager to apply, on behalf of the Town, for federal financing assistance under the provisions of the Land and Water Conservation Fund Act, Public Law 88-578 for the development of Emery Field; and further authorize Town Manager to enter into the Land and Water Conservation Fund Project Agreement with the State subsequent to federal approval of the project. Contingent upon approval of federal funds, the Town Council will appropriate local funds required to match the grant, and further recognizes that the grant program operates on a reimbursement basis, whereby the Town is obligated to pay all costs of the project "up-front," to be repaid by federal reimbursement.

**MOVED BY COUNCILOR THOMPSON, SECONDED BY COUNCILOR WHITE TO  
AUTHORIZE THE TOWN MANAGER TO APPLY FOR FEDERAL FINANCING AS STATED  
IN ITEM H.**

Councilor Dennett requested a copy of the Land and Water Conservation Fund Project Agreement and noted that the Town would have to come up with the funds up front and depend on the Federal Government for reimbursement. Town Manager Puff stated that it is most likely in the same form as the former Emery Field agreement and will try to find a generic agreement to provide to Council.

Town Manager clarified items in the Town Manager's report concerning grants and funding for the project per Councilor Dennett's request.

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

i. (110215-9) The Kittery Town Council moves to accept the resignation of Ray Grenier from the Port Authority.

**MOTION BY COUNCILOR DENAULT AND SECONDED BY COUNCILOR DENNETT TO  
ACCEPT THE RESIGNATION OF RAY GRENIER FROM THE PORT AUTHORITY.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

j. (110215-10) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Port Authority to interview Gerry Ilaria for his appointment to that board until 8/31/20.

**MOTION BY COUNCILOR DENNETT AND SECONDED BY COUNCILOR WHITE TO  
APPOINT COUNCILOR SPILLER TO MEET WITH THE CHAIR OF THE PORT  
AUTHORITY TO INTERVIEW GERRY ILARIA AS PER ITEM J.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

k. (110215-11) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Comprehensive Plan Update Committee to interview Craig Wilson for his appointment to that board as a citizen representative until the Committee's work is done.

**MOTION BY COUNCILOR THOMSON AND SECONDED BY CHAIRPERSON BEERS TO APPOINT CRAIG WILSON AS CITIZEN REPRESENTATIVE TO THE COMPREHENSIVE PLAN UPDATE COMMITTEE WITHOUT THE BENEFIT OF AN INTERVIEW.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

l. (110215-12) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Comprehensive Plan Update Committee to interview Thomas Battcock Emerson for his appointment to that board as a citizen representative until the Committee's work is done.

**MOTION BY COUNCILOR THOMSON AND SECONDED BY CHAIRPERSON BEERS TO APPOINT THOMAS BATTCOCK EMERSON AS CITIZEN REPRESENTATIVE TO THE COMPREHENSIVE PLAN UPDATE COMMITTEE WITHOUT THE BENEFIT OF AN INTERVIEW.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

m. (110215-13) The Kittery Town Council moves to receive correspondence from the Superintendent of Schools in accordance with School Policy DN Sec. A, to give the town first option to purchase a 2001 Chevy Silverado 4WD pickup truck with a plow, before placing it out to bid

**MOTION BY COUNCILOR DENNETT AND SECONDED BY CHAIRPERSON BEERS TO RECEIVE CORRESPONDENCE FROM THE SUPERINTENDENT OF SCHOOLS AS STATED IN ITEM M.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

n. (110215-14) The Kittery Town Council moves to determine the effective date of the amendment to the Town Charter that was approved by the voters on November 3, 2015.

**MOTION BY COUNCILOR DENNETT AND SECONDED BY COUNCILOR THOMSON TO ACCEPT THE EFFECTIVE DATE OF JANUARY 1, 2016 FOR THE AMENDMENT TO THE TOWN CHARTER.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

17. COUNCILOR'S ISSUES AND COMMENTS

Councilor Dennett brought to the attention of Council that the Town of Kittery has received a letter from the City of Portsmouth requesting that Kittery send the City of Portsmouth \$872.31 for Kittery's share of operational expenses on the Memorial Bridge. This money has been sent.

Councilor White welcomed Chairperson Beers to the Council.

Councilor Thomson requested that the Council ask the Town attorney to review the tape of the meeting as he believes that the challenge vote to the ruling of the Chair should have returned the Council

to the original motion that had been made on the agenda concerning to appointment of Mr. Charles H. Denault, III to a term on the Board of Appeals.

Councilor Lemont also welcomed Chairperson Beers and thanked Town Manager Puff for resolving all the issues that he presented to her from Kittery residents.

Councilor Spiller thanked everyone that voted for the Brave Boat Harbor Headways Conservation Bond and the Land Trust. She also thanked the Department of Public Works and Town Manger Puff for all the paving.

Councilor Denault congratulated Councilor Dennett, Councilor Thomson and Chairperson Beers on their appointments and thanked those that voted for him as Vice Chair.

Councilor White asked the Council if they will need a special meeting next week in order to meet the deadline of the twentieth for the Emery Field Grant Application. Town Manger Puff assured Councilor White that the vote of Council tonight in addition to the project certification is all she needed from the Council.

Councilor Thomson added that he received comments from the public regarding the article written by Dennis Robinson in the paper regarding the Stafford School. Councilor Thomson offered to work with Councilor Spiller to try to gather people together who are interested in trying to find a solution.

Chairperson Beers announced that on November 10 at 8:00 a.m. there will be a Veteran's breakfast at the Kittery Community Center. At 9:00 am at Marshwood Middle School the Annual Veteran's Assembly will take place. The Assembly takes a couple of hours and is a very special, moving ceremony for Veterans. All are encouraged to attend. Chairperson Beers also encouraged participation in "Movember" in which men are encouraged to grow a mustache and any funds that are saved go towards helping men's fight against cancer. There are 585,000 people in our country die every year from cancer, 284,000 are women and 305,000 men die every year from cancer.

**18. COMMITTEE AND OTHER REPORTS**

a. Communications from the Chairperson - none

b. Committee Reports - none

**19. EXECUTIVE SESSION**

**IT WAS MOVED BY COUNCILOR DENNETT AND SECONDED BY COUNCILOR DENAULT TO GO INTO EXECUTIVE SESSION AT 9:17 P.M.**

**A ROLE CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

**IT WAS MOVED BY COUNCILOR THOMSON AND SECONDED BY COUNCILOR SPILLER TO COME OUT OF EXECUTIVE SESSION AT 9:57 P.M. ROLL CALL VOTE WAS TAKEN. MOTION PASSED, 7/0/0.**

**20. ADJOURNMENT:**

601 IT WAS MOVED BY COUNCILOR THOMSON, SECONDED BY COUNCILOR SPILLER TO  
602 ADJOURN THE MEETING AT 9:58P.M. ALL WERE IN FAVOR BY A VOICE VOTE.  
603 MOTION PASSED, 7/0/0.





# TOWN OF KITTERY, MAINE

## TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED  
OCT 22 2015

BY: 11:45 AM

PLEASE CHECK APPROPRIATE SQUARE:

- ☒ APPLICATION FOR RE-APPOINTMENT TO TOWN BOARDS
- ☐ APPLICATION FOR APPOINTMENT FROM ALTERNATE TO FULL MEMBER
- ☐ APPLICATION FOR APPOINTMENT FROM FULL MEMBER TO ALTERNATE

NAME: Karen Kalmar

RESIDENCE: 191 Brave Boat Harbor Rd, KP 03905

MAILING ADDRESS IF DIFFERENT FROM ABOVE: PO Box 217 KP 03905

E-MAIL ADDRESS: those7@comcast.net

TELEPHONE NUMBERS: (HOME) (207) 439-6497 (WORK) \_\_\_\_\_

PRESENT POSITION: Planning Board member

PLEASE CHECK APPROPRIATE SQUARE:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Board of Appeals               | <input type="checkbox"/> Port Authority            | <input type="checkbox"/> Mary Safford Wildes Trust                 |
| <input type="checkbox"/> Conservation Commission        | <input checked="" type="checkbox"/> Planning Board | <input type="checkbox"/> Shellfish Conservation Comm.              |
| <input type="checkbox"/> Board of Assessment Review     | <input type="checkbox"/> Parks Commission          | <input type="checkbox"/> Open Space Committee                      |
| <input type="checkbox"/> Cable TV Rate Regulation Board | <input type="checkbox"/> Personnel Board           | <input type="checkbox"/> Recycling Scholarship Selection Committee |
| <input type="checkbox"/> Other _____                    |  |  |

COMMENTS: I'd be grateful to have the opportunity to serve another term.

Please read the back of this application before signing.

Karen Kalmar  
SIGNATURE OF APPLICANT

10/14/15  
DATE



# TOWN OF KITTERY, MAINE

## TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED  
OCT 15 2015

BY: 10:12 AM

PLEASE CHECK APPROPRIATE SQUARE:

- ☒ APPLICATION FOR RE-APPOINTMENT TO TOWN BOARDS
- ☐ APPLICATION FOR APPOINTMENT FROM ALTERNATE TO FULL MEMBER
- ☐ APPLICATION FOR APPOINTMENT FROM FULL MEMBER TO ALTERNATE

NAME: Mark Alesse

RESIDENCE: 176 Brave Boat Harbor Rd

MAILING ADDRESS IF DIFFERENT FROM ABOVE: \_\_\_\_\_

E-MAIL ADDRESS: mark.alesse@gmail.com

TELEPHONE NUMBERS: (HOME) 207-703-2054 (WORK) 518 210-3544

PRESENT POSITION: Planning Board - Retired

PLEASE CHECK APPROPRIATE SQUARE:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Board of Appeals               | <input type="checkbox"/> Port Authority            | <input type="checkbox"/> Mary Safford Wildes Trust                 |
| <input type="checkbox"/> Conservation Commission        | <input checked="" type="checkbox"/> Planning Board | <input type="checkbox"/> Shellfish Conservation Comm.              |
| <input type="checkbox"/> Board of Assessment Review     | <input type="checkbox"/> Parks Commission          | <input type="checkbox"/> Open Space Committee                      |
| <input type="checkbox"/> Cable TV Rate Regulation Board | <input type="checkbox"/> Personnel Board           | <input type="checkbox"/> Recycling Scholarship Selection Committee |
| <input type="checkbox"/> Other _____                    |  |  |

COMMENTS: \_\_\_\_\_

Please read the back of this application before signing.

Mark Alesse  
SIGNATURE OF APPLICANT

10-15-15  
DATE





# TOWN OF KITTERY, MAINE

## TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED  
NOV 10 2015  
BY: 10:05 am

### APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: Brett Hosta

RESIDENCE: 19 Lynch Lane

MAILING (if different) Same

E-MAIL ADDRESS: Drumar1@Comcast.net PHONE #: (Home) 267 (Work) 451-0442

#### Please check your choice:

- |  |   |
|--|---|
| <input type="checkbox"/> Board of Appeals                    | <input type="checkbox"/> Board of Assessment Review       |
| <input type="checkbox"/> Conservation Commission             | <input type="checkbox"/> Mary Safford Wildes Trust        |
| <input type="checkbox"/> Comprehensive Plan Update Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Education Scholarship Committee     | <input type="checkbox"/> Economic Development Committee   |
| <input type="checkbox"/> Parks Commission                    | <input type="checkbox"/> Open Space Committee             |
| <input type="checkbox"/> Port Authority                      | <input checked="" type="checkbox"/> Planning Board        |
| <input type="checkbox"/> Personnel Board                     | <input type="checkbox"/> Other _____                      |

EDUCATION/TRAINING: \_\_\_\_\_

RELATED EXPERIENCE (Including other Boards and Commissions) \_\_\_\_\_

PRESENT EMPLOYMENT: Self

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY ☒ Yes ☐ No

ANY KNOWN CONFLICT OF INTEREST (please read back of application): \_\_\_\_\_

REASON FOR APPLICATION TO THIS BOARD: Severe Town

I HAVE \_\_\_/HAVE NOT \_\_\_ ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Please read the back of this application before signing.

Brett Hosta  
SIGNATURE OF APPLICANT

11/10/15  
DATE

RECEIVED  
NOV 09 2015  
BY: .....

LINCOLN  
100H SHEPARD'S COVE RD., E307  
KITTERY, ME 03904  
"TREE TOPS"

Maryann Place  
Town Clerk  
Kittery, Maine

re: Kittery Planning Board Membership

November 5, 2015


Maryann,

In October 2014, when a resignation reduced the Planning Board membership to five I submitted my application.

I was appointed by the Town Council to the Planning Board for a one year term beginning December 1, 2014. This appointment expires November 30, 2015.

This is to inform you , as Town Clerk, that I WILL NOT be seeking appointment to a new term.

I appreciate the opportunity to have participated on the Planning Board and wish them well in moving Kittery forward

Sincerely,  
  
David Lincoln

1   **Title 4 BOARDS, COMMISSIONS and COMMITTEES**

2  
3   **4.2.5 Appointment Exceptions.**

4   A. Building Committee – when Council-appointed membership is involved, appointment  
5   procedure is determined by the sitting Council.

6   B. Charter Commission – procedure is determined by the sitting Council.

7   C. Christmas Parade Committee – members recommended by sponsoring group.

8   D. Rice Public Library Board of Trustees – application and interview procedure applies, but  
9   appointment is made by Library Trustees.

10   E. Newly-formed Boards not existing as of November 1, 2000 – procedure is determined by the  
11   sitting Council

12   F. For the purpose of aligning term ending dates, the Council may make appointments in excess  
13   of three years (but no more than four years).

14  
15  
16   **Chapter 4.3 BOARD OF ASSESSMENT REVIEW**

17   **4.3.2 Membership.**

18   Qualifications of members, their appointment and terms, is governed by Article VII of the Town  
19   Charter. Members serve until their successors are appointed and qualified.

20  
21   **Chapter 4.4 KITTELY COMMUNITY CENTER BOARD of DIRECTORS**

22  
23   **4.4.1 Appointment and Composition.**

24  
25   A. Pursuant to the provisions of the Town Charter, Section 2.07(1), the Town Council  
26   establishes a Board of Directors for the Kittery Community Center at Frisbee Common to  
27   oversee those aspects of Center operations and facilities as delineated in this Chapter.

28  
29   B. The Board consists of nine (9) voting members. Seven (7) are Kittery residents, serving  
30   staggered terms of office of three years each, plus the Town Manager and a Council-appointed  
31   Town Councilor. For the purpose of aligning term ending dates, the Council may make  
32   appointments in excess of three years (but no more than four years). The Recreation Director  
33   and Town Planner are ex officio members without voting rights.

34  
35   C. Resident appointments are to be comprised of individuals with demonstrable experience  
36   or association with recreation (3); arts and culture (2); economic or community development (1);  
37   plus a member-at-large (1).

38  
39   D. The initial appointment of one recreation member, one arts and culture member, and the  
40   economic or community development member are for three years. The second recreation and  
41   arts and culture initial appointments are for two years, with the remaining two appointments for  
42   one year. All subsequent resident appointments, or reappointments, are to be for three year  
43   periods, except as provided in 4.4.1 I.

44  
45   E. Members of the Board are appointed by the Town Council.

46  
47   F. Municipal officers or officials, or a spouse thereof, may not serve as a resident member  
48   of the Board.

49  
50   G. Members serve until their successors are appointed and qualified.

51

H. A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.

I. Vacancies are filled by Town Council appointment for the unexpired term.

#### 4.4.2 Powers and Duties.

A. The Board shall elect annually a chairperson, vice chairperson, and secretary from its membership. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board, and show the vote of each member upon each question.

B. A quorum consists of five or more members. All decisions must be made by a minimum of five like votes, except on procedural matters.

C. The Board shall propose bylaws for Town Council adoption to govern routine Board proceedings.

D. The Board shall set agendas and hold meetings to perform duties.

E. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, subject to 4.4.2 B above, except the member who is being challenged, who may not vote on the issue.

F. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.

G. The Board is to:

1. Prepare and recommend a Long Range (5-Year) Community Center Development Plan for Council adoption, updated annually, and monitor and report on Plan implementation progress;

2. Develop operational policies, and approve operating procedure protocols recommended by administration;

3. Review and endorse an annual operating budget proposal for operations and facilities maintenance developed by administration;

4. Develop and annually recommend a Capital Program to the Capital Improvement Program Committee; and

5. Report quarterly for the first year of operation, then annually or at such intervals as the Town Council may direct thereafter, on programs, use, growth, and new activity at the Center. Such report may include elements to satisfy the Plan implementation progress report.

### **Chapter 4.5 REGISTRATION APPEALS BOARD**

### **Chapter 4.6 BOARD OF TRUSTEES of TRUST FUNDS**

#### **4.6.2 Membership.**

The board consists of five members, the chairperson of the town council and the town clerk to be ex officio members and the clerk to be treasurer of said fund, and three additional members to be appointed by the moderator for one, two and three years respectively; and hereafter each year one member is to be appointed by the Town Council for a three-year term and thereafter for successive three-year terms. Appointed members serve until their successors are appointed and qualified. For the purpose of aligning term ending dates, the Council may make appointments in excess of three years (but no more than four years). Appointed member vacancies are filled by town council appointment for the unexpired term.

## **Chapter 4.7 PERSONNEL BOARD**

### **4.7.1 Established-Composition-Qualifications, Terms, Removal, Compensation of Members-Filling of Vacancies-Duties Generally.**

A Personnel Board is established, consisting of five members appointed by the Town Council. A personnel board is established, consisting of five members appointed by the Town Council. No member of the Board may be employed by the town, nor hold or be a candidate for any elective office. Members of the Board serve terms of three years and until their successors are appointed and qualified provided, however, that of the members originally appointed, one shall serve for a term of one year, two for a term of two years, and two for a term of three years. All terms expire on the same date in their respective years. Members serve conditioned only upon good behavior and may be removed for cause after notice and hearing. However, no member of the Board may serve for more than two consecutive three-year terms. Vacancies occurring during a term are filled by the Town Council for the balance of the term. Members of the Board serve without compensation, but funds will be provided for reasonable and necessary expenses. The Board elects its own chairperson. In addition to the duties set forth elsewhere in this chapter, the Board is to:

1. Advise the Town Manager on matters of personnel policy and problems of personnel administration, including the development of personnel rules, a job classification plan, and a uniform pay plan;
2. Represent the public interest in the improvement of personnel administration in the Town service;
3. Make any inquiry which it may consider desirable concerning personnel administration in the Town service, and make advisory recommendations to the Town Manager, with respect thereto.

## **Chapter 4.8 SHELLFISH CONSERVATION COMMITTEE**

The shellfish conservation program for the town is administered by the shellfish conservation committee consisting of seven full members and two alternate members appointed by the Town Council for terms of three years. Members serve until their successors are appointed and qualified. For the purpose of aligning term ending dates, the Council may make appointments in excess of three years (but no more than four years). Vacancies are filled by town council appointment for the unexpired term.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the department of marine resources the number of shellfish digging licenses to be issued;
- B. Surveying each clam-producing area at least once every three years to establish size distribution and density and annually estimating the status of the Town's shellfish resources;
- C. Submitting to the Town Council proposals for the expenditures of funds for the purpose of shellfish conservation;
- D. Keeping this chapter under review and making recommendations for its amendments;



E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the department of marine resources;  
F. Recommending conservation closures and openings to the Town Council in conjunction with the area biologists of the department of marine resources;  
G. Submitting an annual report to the municipality and the department of marine resources covering the above topics and all other committee activities.

## **Chapter 4.9 CONSERVATION COMMISSION**

### **4.9.4 Membership.**

A. The town council may appoint at least three, but not more than seven, conservation commissioners. The commissioners are selected from the qualified resident voters of the town. Members are initially appointed for terms of one, two and three years, such that the terms of approximately one third of the members will expire each year. Their successors are appointed for terms of three years each. Members serve until their successors are appointed and qualified. For the purpose of aligning term ending dates, the Council may make appointments in excess of three years (but no more than four years).

Vacancies are filled by town council appointment for the unexpired term.

B. The Commission may recommend to the municipal officers that associate members be appointed to assist the Commission as the Commission requires. Associate members are nonvoting members, except when a quorum is absent. Their terms of office are to be for one, two or three years. Associate members are selected from the qualified resident voters of the Town.

## **Chapter 4.10 PARKS COMMISSION**

### **4.10.4 Membership.**

A. The Commission consists of seven members, qualified under Section 2.07(2) of the Town charter, who have demonstrated an interest in the Town parks and facilities. Members are initially appointed for terms of one, two and three years, such that the terms of approximately one third of the members will expire each year. Their successors will be appointed for terms of three years each. Members serve until their successors are appointed and qualified. For the purpose of aligning term ending dates, the Council may make appointments in excess of three years (but no more than four years). Vacancies are filled by town council appointment for the unexpired term.

B. The Commission may recommend to the municipal officers that associate members be appointed to assist the commission, as the commission requires. Associate members are nonvoting members except when a quorum is absent. Their terms of office are to be for one, two or three years. Associate members are selected from the qualified resident voters of the Town.



**TOWN OF KITTERY**  
200 Rogers Road, Kittery, ME 03904  
Telephone: 207-475-1329 Fax: 207-439-6806

---

**REPORT TO TOWN COUNCIL**

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Meeting Date: November 23, 2015  
From: Steve Workman, Chair KCC Board  
Subject: KCC Facility Use Policy Revision  
Councilor Sponsor: Jeff Thomson, KCC Board Council Rep.

---

**EXECUTIVE SUMMARY**

The Facility Use Policy for the Kittery Community Center was adopted by the council in January 2013. The KCC Board of Directors developed and has approved the attached revisions after operating for approximately two years under the original policy.

When reviewing the document please note that regardless of color the following have been used to designate changes from the adopted policy:

\*Deleted Text – Indicated by a strike-through

\*Added Text – Indicated by an underline

**STATEMENT OF NEED**

The Board believes these revisions will clarify the policy leading to improved operation, better management of fees and clearer understanding between users and the Town.

**BACKGROUND**

Steven Workman will attend the council meeting to answer any questions, review policy and provide any additional background the council may need.

**FACTS BEARING ON THE EQUATION**

See the attached proposed policy revisions.

**PROPOSED SOLUTION/RECOMMENDATION**

The KCC Board of Directors recommends that the Council approve the proposed policy revisions.

**RATIONALE FOR THE PROPOSED SOLUTION (INCLUDING COSTS)**

There is no additional cost to the Town.

**TOWN OF KITTERY**  
**FACILITY USE POLICY FOR THE KITTERY COMMUNITY CENTER AT FRISBEE COMMON**

**Section 1 – Policy Purpose**

- 1.1** Portions of the Town-owned Kittery Community Center at Frisbee Common are available for use by the public for activities and programs that meet the needs and interests of the community. This may include meetings, theatrical productions, sporting events, weddings, and other functions. The purpose of this policy is to set forth the process, rules and regulations that govern responsible use of the Facility. This Policy applies only to the Kittery Community Center at Frisbee Common and may not be applied to another Town facility without formal action of the Kittery Town Council.

**Section 2 – Captions & Definitions**

- 2.1 Captions:** The captions or headings that are used in this Policy are used only as a matter of organization and convenience and in no way define, limit, construe or describe the scope or intent of the provision of this Policy.
- 2.2 Definitions:** As used in this Policy, unless the context otherwise indicates, the following terms have the meanings indicated:

**Alcohol** - Means the substance known as ethyl alcohol, hydrated oxide of ethyl or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, sugar, potatoes or other substances, and includes all dilutions and mixtures of these substances including imitation liquor which means any product containing less than 1/2 of 1% alcohol by volume which seeks to imitate by appearance, taste and smell liquor or which is designed to carry the impression to the purchaser that the beverage has an alcohol content.

**Application for the Service and Consumption of Alcohol** – Means an optional component of the Facility Use Agreement.

**Direct Expense** – Means an expense incurred by the Town, which it would not have otherwise incurred as part of its normal operation, but did incur as a direct result of private use of the Facility. The following are examples of the types of direct expenses that could be incurred by the Town as the result of private Use of the Facility: (1) A User wishing to hold a Function outside of normal Facility operating hours requires that the Town pay a building supervisor to be present during the Function; (2) A Function that requires a dedicated police presence will require that the Town pay police officers for the duration of the Function; (3) Damage, beyond normal wear and use, that occurs to the Facility or its equipment during a Function will require repair or replacement.

**Facility** – Means the Kittery Community Center at Frisbee Common including the interior and exterior premises.

**Facility Use Agreement** – Refers collectively to the policies, agreement and form(s) including the KCC Alcohol Policy and Application for the Service and Consumption of Alcohol if applicable, required for the use of the Kittery Community Center at Frisbee Common (Facility).

**Facility Use Period** – Means the date(s) and time(s) defined in the Facility Use Agreement during which the User has secured the rights and responsibilities to use the Facility for a defined purpose.

**Function** – Means the generic term used to collectively describe the various types of Facility uses allowed under this Policy, including private functions by invitation only and those open to the public.



**KCC** - Means the Kittery Community Center at Frisbee Common, owned and operated by the Town of Kittery, Maine.

**KCC General Manager** – Means the Agent of the Town, or his/her designee, responsible for the supervision and operation of the KCC.

**Patron** – Means any individual authorized by the User, through invitation or open-call to the general public, whether for a fee or at no charge, to attend or participate in the User’s Function.

**Police Chief** – Means the Town of Kittery Chief of Police

**Rental Fee** – Means the fee charged for specific use of a portion of the Facility as defined herein and by the Facility Use Agreement. The Rental fee includes utility costs such as heat, electricity, water and sewer, but does not include other fees identified in this Policy such as security deposit, surcharges, Direct Expenses, etc.

**Service and Consumption of Alcohol** – Means the act of furnishing alcohol to Patrons whether for a fee or at no charge and/or the consumption of alcohol by Patrons.

**Town** - Means the Town of Kittery, Maine, a body corporate and politic.

**User** – Means the entity entering into a contractual agreement with the Town for the use of the Facility as defined in the Facility Use Agreement.

### Section 3 – Facility Use

**3.1 Types of Facility Use:** The following types of Facility use are hereby defined for the purpose of applying policy ~~and fees~~:

**(A) ~~Municipal & School~~Town and Kittery School Department UsageUse:** Refers collectively to all Facility use by the Town and Kittery School Department. Such use may include, but is not limited to, administrative activities, meetings, classes, programs (including athletics, fine arts, etc.) special events and other activities sponsored or co-sponsored by the Town or Kittery School Department.

**(B) Federal, State & Local Government Use:** Means any variety of activities associated with the function and operation of federal, state, county and local government other than the Town and Kittery School Department. Such activities and events may include, but are not limited to public meetings, trainings, emergency management & services and public outreach activities, but does not include those activities and events defined under Sections 3.1.G and 3.1.H of this Policy.

**~~(B)~~(C) Low Impact Meetings:** Means meetings sponsored by a User other than the Town or School Department that are (1) conducted in a multi-purpose space, not including the kitchen, theater and gymnasium, (2) are held during normal hours of operation; (3) do not require dedicated KCC personnel; (4) do not require outside services such as catering; and (5) are conducted by a qualified category of User as defined herein. The purpose of defining this type of use is to preserve the community spirit of the Facility so that is available for community-based initiatives.

**~~(C)~~(D) Classes/Trainings:** Means classes or trainings sponsored by a User other than the Town or School Department. Such classes or trainings may be offered for a fee and vary in subject matter, but must be consistent with all Facility use policies and any applicable local, state and federal laws and policies while also preserving the mission and character of the KCC. Target audiences may vary and include both private (closed) and public (open) invitation to participate.



~~(D)~~(E) **Performing Arts Events:** Means any variety of dramatic, musical or artistic events sponsored by a User other than the Town or School Department. The nature of this type of use is distinct in that it typically requires some combination of use of the theater, backstage, technical booth, dressing rooms and related support services often over a period of days or weeks. This usage is distinct from use of the theater for non-performing arts events. Examples include: Theatrical productions, concerts, and dramatic readings.

(F) **Athletic Events:** Means any variety of athletic activities and events sponsored by a User other than the Town or School Department that requires use of the gymnasium and related equipment. This may include, but is not limited to, athletic leagues, competitions and clinics. This usage is distinct from use of the gymnasium for non-athletic functions.

(G) **Political Process Events:** Means non-partisan activities and events that promote citizen engagement in the operation of federal, state, county and local government and the election process. Such activities and events may include, but are not limited to voting, constituent meetings, gathering signatures for petitions, forums and debates, but does not include those activities and events defined under Section 3.1.H of this Policy.

~~(E)~~(H) **Political Campaign Events:** Means any variety of activities and events designed to influence or promote the nomination or election of one or more candidates to political office or to influence the outcome of a referendum vote. Such activities and events may include, but are not limited to fundraisers, meet and greets and rallies, but does not include those activities and events defined under Section 3.1.G of this Policy.

~~(F)~~(I) **Special Events:** Means all other events not expressly defined under Section 3.1 A-~~E~~-H of this Policy, that are sponsored by a User other than the Town or School Department. Special events may utilize one or multiple rooms in the Facility. Uses may include, but are not limited to, ceremonies, annual meetings, tradeshow, banquets, fairs and meetings that do not qualify as “low impact” under Section 3.1.~~B-C~~ of this Policy.

### 3.2 **Category of Facility Users:** The following categories are for determining fees and charges:

(A) **Group I:** The Town and Kittery School Department;

(B) **Group II:** Nonprofit corporations as defined by Maine Revised Statute Title 13-B: Maine Nonprofit Corporation Act, or as defined by an equivalent Nonprofit Statute in another State, when such organization seeks to hold a function that will assist Kittery Residents with meeting basic or physiological needs. For the purpose of this Policy, basic needs are defined as those physical requirements for human survival such as food, shelter, warmth, etc. The purpose of this category is to provide an opportunity for the Town to support such efforts through a reduction in Facility rental fees as described more fully herein;

(C) **Group III:** Civic organizations that provide service(s) to the Kittery Community such as Rotary, Kiwanis, or the American Legion;

(D) **Group IV:** Nonprofit corporations as defined by Maine Revised Statute Title 13-B: Maine Nonprofit Corporation Act, or as defined by an equivalent Nonprofit Statute in another State, that do not qualify for Group II designation under and are not given a different designation under Section 3.2 of this Policy;



**(E) Group V:** Kittery Residents and Kittery-based businesses;

**(F) Group VI:** Non-resident individuals and businesses;

**(G) Group VII:** Incorporated or un-incorporated Political Action Committees, campaign committees/organizations, political parties and individual candidates seeking election to public office, without regard to state charitable designation or Internal Revenue Services tax designation;

**(F)(H) Group VIII:** Divisions of Federal, State, county and Local Government, excluding the Town and Kittery School Department.

**(G)(I) Other:** Any entity not covered under Groups I – VII above and subject to approval of the KCC Board of Directors.

**3.3 Use of the Facility and Equipment:** The Town makes no representations or promises with respect to the Facility or its equipment except as set forth in the Facility Use Agreement. The use of the Facility by the User shall be conclusive evidence against the User that the User accepts the Facility and its equipment “as is” and that said Facility and its equipment were in good and satisfactory condition at the time such possession was taken.

**3.4 Priority Use Scheduling:** Use of the Facility is given first to functions sponsored or co-sponsored by Group I – the Town or then to functions sponsored or co-sponsored by Kittery School Department and then to all other Users, are given priority use of the Facility.

**3.5 Establishment of Facility Use Fees:** The KCC Board of Directors, working in collaboration with KCC General Manager and under the terms of this Policy, will establish and periodically adjust the rates for all fees related to the Use of the Facility including, but not limited to: rental fees; surcharges; deposits; and penalties. Fees may be adjusted at any time. Rate changes will take effect on the date set by the KCC Board of Directors. Rate changes will not apply to Functions for which a Facility Use Agreement has been fully executed and confirmed prior to the date set for the new rate changes except as follows: If the Facility Use Period is 12 or more months from the date the new rates take effect the Town may require that the new rates be applied to such existing Facility Use Agreement. Upon receiving notice from the Town, the User will have the option to accept the rate change and amend the Facility Use Agreement or terminate it without penalty.

**3.6 Facility Rate Sheet:** Unless otherwise stated in this Policy, specific dollar amounts for fees are not included as they will change. Fees will be maintained on the KCC Facility Rate Sheet and amended independently from this Policy.

**3.7 Application of Fees:** The following table outlines the method for applying rental fees established for the different categories of Facility Users. Users will be advised of any known additional charges such as deposits or Direct Expenses passed to the User from the Town, while completing the Facility Use Agreement.

Group	Fee	Limitations
Group I (Town)	No Fees Charged	▪ School Dept. must pay any Direct Expenses incurred by the Town
Group II (Basic Needs)	▪ Unlimited Low Impact Meetings	▪ User must pay any Direct Expenses

	<ul style="list-style-type: none"> <li>No Rental Fee for up to 2 Functions per calendar year</li> <li>Full Rental Fee required after 2 free Functions</li> </ul>	<ul style="list-style-type: none"> <li>incurred by the Town</li> <li>Security deposit(s) may still be required</li> </ul>
Group III (Civic)	<ul style="list-style-type: none"> <li>Unlimited Low Impact Meetings</li> <li>No Rental Fee for up to 2 Functions per calendar year</li> <li>Full Rental Fee required after 2 free Functions</li> </ul>	<ul style="list-style-type: none"> <li>User must pay any Direct Expenses incurred by the Town</li> <li>Security deposit(s) may still be required</li> </ul>
Group IV (Non Profit)	<ul style="list-style-type: none"> <li>Unlimited Low Impact Meetings</li> <li>50% discount in regular Rental Fees for up to 2 Functions per calendar year</li> <li>Full Rental Fee required after 2 reduced Functions</li> </ul>	<ul style="list-style-type: none"> <li>User must pay any Direct Expenses incurred by the Town</li> <li>Security deposit(s) required</li> <li>Discount does not apply to rental packages that are already discounted</li> </ul>
Group V (Resident)	<ul style="list-style-type: none"> <li>Limited Low Impact Meetings</li> <li>10% discount on regular Rental Fees</li> </ul>	<ul style="list-style-type: none"> <li>Town reserves the right to limit Low Impact Meetings based on Facility usage</li> <li>Security deposit(s) required</li> <li>Discount does not apply to rental packages that are already discounted</li> </ul>
Group VI (Non Resident)	<ul style="list-style-type: none"> <li>Full Rental Fees apply</li> </ul>	<ul style="list-style-type: none"> <li>Low Impact Meetings not available</li> </ul>
Group VII (Political)	<ul style="list-style-type: none"> <li>Full rental Fees apply</li> <li>No discounts applied</li> <li>May not apply under a different user category</li> </ul>	<ul style="list-style-type: none"> <li>Low Impact Meetings not available</li> </ul>
Group VIII (Government)	<ul style="list-style-type: none"> <li>Meetings open to the public are free</li> <li>Meetings, trainings, events, etc. closed to the public pay full rental fees</li> </ul>	<ul style="list-style-type: none"> <li>Must pay any Direct Expenses incurred by the Town</li> </ul>
Other	<ul style="list-style-type: none"> <li>Determined on a case-by-case basis.</li> </ul>	

#### Section 4 – Facility Reservation and Use Agreement Procedures

- 4.1 Facility Use Agreement:** Use of the Facility by an entity other than the Town will require completion of a Facility Use Agreement.
- 4.2 Oversight:** The KCC General Manager is responsible for overseeing Facility reservations and usage. This will include working with Users to complete a Facility Use Agreement and ensure that critical milestones, requirements and submissions are met prior to issuing final approval of the Facility Use Agreement.
- 4.3 User:** Any individual negotiating and executing a Facility Use Agreement for personal use or on behalf of an organization must be twenty-one (21) years of age or older.
- 4.4 Reservations:** Reservations are accepted ~~on a continual basis~~ up to Twenty-four (24) months in advance and may be made at any point prior to the requested date(s) provided, at the sole discretion of the KCC General Manager, enough time remains for the User to meet all requirements and for the Town to issue final approval of the Facility Use Agreement. Reservations for use of the Facility must be made in writing on a Facility Use Agreement and is a two-step process. A Reservation will be considered confirmed only when the rental fee and security deposit have been paid in full. A confirmed reservation does not constitute final approval of the Facility Use Agreement, but it does reserve the space while the User completes other requirements set forth in this Policy and the Facility Use Agreement. Unpaid reservations will be held as a courtesy for 48 hours, but this does not constitute a confirmed reservation. After 48 hours, the KCC General Manager may release an unpaid reservation for use by another User. In summary, the process for securing use of the Facility is a three-step process as follows:



1. **Reservation Inquiry:** Date(s) is held for 48-hours
2. **Confirmed Reservation:** Town and User have a signed Facility Use Agreement and User has paid the required rental fee and security deposit.
3. **Final Approval:** User has completed all requirements set forth in this Policy and the Facility Use Agreement.

**4.5 Reservation Changes:** Changes to a confirmed reservation are allowed at no additional charge provided space is available and all requirements can be met including staffing. The KCC is under no obligation to accommodate requests to change a confirmed reservation.

**4.6 Termination of a Facility Use Agreement:** A Facility Use Agreement may be terminated at any time by the Town or User for reasons described herein. Should the Town or the User terminate a Facility Use Agreement the following will apply:

**(A) Termination by Town:** The Town may terminate a Facility Use Agreement in event that the Facility is required for Town emergency use, weather or public safety emergencies, or the Facility has sustained damage, or its operation has been compromised. If termination occurs for these reasons The Town and User may negotiate new date(s) equal to the balance remaining on the original Facility Use Period with no additional charges. If such negotiation is not possible or mutually agreed upon the Town will issue a refund of any fees paid to the Town according to the following schedule:

1. **Termination Occurs Before the Facility Use Period begins:** The Town will refund to the User any rental fees and/or deposits paid by the User after deducting any Direct Expenses incurred by the Town in connection with said Facility Use Agreement.
2. **Termination Occurs During the Facility Use Period:** The Town will refund a pro-rata share of the rental fee for the unused portion of the Facility Use Period and any Deposits after deducting any Direct Expenses incurred by the Town in connection with said Facility Use Agreement.

The Town may also terminate a Facility Use Agreement for just cause which will include: failure of the User to comply with all provisions and requirements set forth in this Policy and the Facility Use Agreement; and violation of any applicable local, state and federal laws, rules and policies. If termination occurs for non-compliance the User shall forfeit all fees and deposits and is liable for any Direct Expenses incurred by the Town in connection with said Facility Use Agreement that exceeds payment made by the User.

In the event of termination by the Town, the User hereby waives any and all claims for damages or loss of profit or other compensation that might arise out of such termination.

**(B) Termination by User:** The User may terminate a Facility Use Agreement by providing written notice to the KCC General Manager. In the event that a User terminates a Facility Use Agreement, the Town will refund to the User any rental fees and/or deposits paid by the User after deducting any Direct Expenses incurred by the Town in connection with said Facility Use Agreement and any the Town will require liquidated damages to be paid by the User according to the following schedule:

1. **Notice Given 0 to 60 Days prior to Facility Use Period:** The User must pay 100% of the rental fee plus any Direct Expenses incurred by the Town in connection with said Facility Use Agreement.



2. **Notice Given 61 to 90-120 Days prior to Facility Use Period:** The User must pay ~~Fifty-percent (50%)~~ Seventy-five-percent (75%) of the rental fee plus any Direct Expenses incurred by the Town in connection with said Facility Use Agreement.

3. **Notice Given 121 to 180 Days prior to Facility Use Period:** The User must pay Fifty-percent (50%) of the rental fee plus any Direct Expenses incurred by the Town in connection with said Facility Use Agreement.

4. **Notice Given 91-181 Days or more prior to Facility Use Period:** The User ~~will not be assessed any liquidated damages, but the User must still pay any Direct Expenses incurred by the Town in connection with said Facility Use Agreement.~~ must pay Twenty-five-percent (25%) of the rental fee plus any Direct Expenses incurred by the Town in connection with said Facility Use Agreement.

~~3.5.~~ **Termination of Free Rentals:** Termination of a Facility Use Agreement by a User who qualified for a free function as a member of either Group II or III, as defined under Section 3.7, will be subject to a flat-rate cancellation surcharge plus any Direct Expenses incurred by the Town in connection with said Facility Use Agreement. The KCC Board of Directors will establish, and periodically adjust, the rate of this surcharge as outlined under Section 3.5. This surcharge will be applied regardless of the number of days notice given to terminate and therefore is not subject to the provisions of Section 4.6.B.1-4. This provision does not apply to cancellation of Low Impact Meetings as defined under Section 3.1.C.

**(C) Vacating Facility:** Upon termination of the Facility Use Agreement for whatever reason, the User agrees to immediately remove, at User's expense, all its property from the Facility. If the User has a substantial amount of equipment such as is expected with a theatrical production, removal must occur within 24 hours unless otherwise agreed to by the Town.

~~(C)(D)~~ **Limited Refund of Cancellation Surcharge:** In the event that the Town is able to rent the Facility to a different User for all or a portion of the terminated Facility Use Period, a refund of up to Seventy-Five-percent (75%) of the charges applied under Section 4.6.B.1-5 will be issued. In the event that only a portion of the Facility Use Period is able to be rented, the refund is to be pro-rated by that portion. The Town is under no obligation to find a new User to rent the Facility. Refunds do not include any Direct Expenses incurred by the Town in connection with said terminated Facility Use Agreement.

4.7 **Facility Room Changes:** The KCC General Manager may assign or reassign rooms, as deemed appropriate based on the nature of the Function, estimated number of participants, cancellations of other Functions, etc. A change will not be made unless it meets or exceeds the needs of the User.

4.8 **Required Submittals:** The following information must be submitted with the Facility Use Agreement in order for it to be considered complete:

(A) Payment-in-full of the rental fee\*

(B) Payment-in-full of ~~the Security~~ any required Deposits and Surcharges;

(C) Copies of any required permits, licenses and insurance certificates as set forth in this Policy and the Facility Use Agreement;

(D) The names of the primary and alternate designees who will be the point of contact during the Function;

- (E) Any additional requirements set forth by the KCC General Manager including, but not limited to, police and custodial service requirements.

\*KCC General Manager may approve alternative arrangements for Functions using the KCC Box Office.

**4.9 Application for the Service and Consumption of Alcohol:** This Application is an optional component of the Facility Use Agreement and will require additional fees. Users must be able to comply with all regular requirements set forth in this Policy and the Facility Use Agreement before the Application for the Service and Consumption of Alcohol will be considered. The Town reserves the right to deny an Application for the Service and Consumption of Alcohol for any reason consistent with this Policy and at the discretion of the KCC General Manager and/or Police Chief, Applications that present a degree of risk that is inconsistent with or exceeds acceptable parameters for the safe operation of the Facility and/or safety of all Facility Patrons. Denial of an Application for the Service and Consumption of Alcohol alone does not prohibit the User from using the Facility, but does prohibit the Service and Consumption of Alcohol at that Function.

**(A) Application Review & Approval:** The KCC General Manager is responsible for overseeing the Application process for the Service and Consumption of Alcohol. The KCC General Manager will work with the User to complete the Application as part of the Facility Use Agreement and ensure that critical milestones and submissions are met. Final approval of the Application requires approval by both the KCC General Manager and Police Chief.

**(B) Application Submittals:** The following information must be submitted with the Application in order for the Application to be considered complete; this is in addition to submittals required by the Facility Use Agreement:

1. Payment-in-full of the Alcohol Surcharge;
2. The name and contact information of the Qualified Catering Service who will be working the Function;
3. Copies of all required permits, licenses and insurance certificates set forth in this Policy and the Facility Use Agreement;
4. The name(s) of the catering personnel who will be serving alcohol at the Function and proof that each possesses a current certificate of completion of an alcohol server education course approved by the State of Maine;
5. Any additional requirements set-forth by the KCC General Manager including, but not limited to, police and custodial service requirements.

**4.10 Payment:** Payment of all fees, deposits and surcharges must be made in United States currency. Payment may be made by cash, check or credit card. The Town may require a waiting period for all non-certified checks to clear the bank. A fee will be charged on all checks returned for non-payment. The Town may restrict payment options or make arrangement for alternate methods of payment for any User if, at its sole discretion, the financial interests of the Town will be better served.

**4.11 Refunds:** Refunds will be issued by check and mailed to the User within thirty (30) business days following the Function or notice of termination of the Facility Use Agreement. The Town may delay

issuing a refund if additional time is required for the Town and User to settle issues with Facility damage, cleaning, Direct Expenses or load-out (equipment removal).

- 4.12 Use of KCC Box Office:** The Town may make available to a User the Facility Box Office for an additional charge. Use of the KCC Box Office will require the development of a specialized process between the User and the Town which may modify provisions of this Policy for refunds, exchange of Facility use related fees and distribution of User's revenue generated through ticket sales. As part of this specialized process, the Town may retain a portion of User's box office revenues until User's show load-out is successfully completed. The purpose of this Provision is to allow the User and Town to develop a process which is mutually beneficial while still protecting Town interests.

## Section 5 – General Provisions

- 5.1 Limited Use:** The User may not utilize the Facility for any purpose other than what is specified in the Facility Use Agreement.
- 5.2 No Sublet:** The User may not sublet the Facility or in any way assign the Facility to another entity.
- 5.3 Facility Use Period:** Unless otherwise stipulated in the Facility Use Agreement, the User, its agents, personnel and patrons are not permitted in the Facility before or after the times designated as the Facility Use Period. This provision is not intended to restrict public access to the Facility under normal hours of operation. User is advised to extend the Facility Use Period beyond that which is needed for the actual event to include time for setup and cleanup. The User is hereby notified that exceeding the Facility Use Period may result in additional rental and labor charges. Adherence to this provision ensures that a conflict does not occur with a Function scheduled to follow the User's own Function and to prevent the User from incurring additional charges. Advance delivery of equipment or supplies may be allowed provided there is secure space available for storage, delivery and/or storage does not impact regular operation of the Facility and it has been approved in advance by the KCC General Manager.
- 5.4 Designated Area:** The Facility Use Agreement will designate portions of the Facility that are to be used exclusively by the User. User will also have limited access to portions of the Facility that are considered common or shared such as hallways, entrances, stairwells. Use of such common areas may not in any way impede regular use and is not intended to include special use unless defined in the Facility Use Agreement.
- 5.5 User's Designee:** The User must designate a primary and alternate person who will be the point of contact during the Function. Either the primary or alternate person must be present for the duration of the Function including set-up and clean-up.
- 5.6 KCC Facility Supervision:** Town personnel responsible for the supervision of the Facility must be present whenever the Facility is in use. Such personnel are present during regular hours of operation at no additional charge to the User. Use of the Facility outside of regular hours is allowed, but may require the User to pay for Facility supervision. Under limited circumstances, the KCC General Manager may allow the User to occupy the Facility outside of regular hours without supervision by Town personnel provided the User designates an individual who will assume responsibility for securing the building at the conclusion of the Facility Use Period. This exemption is primarily limited to those professional Users whose use of the Facility spans multiple days and who have demonstrated a high degree of responsibility in using the Facility; for example a theater production company. The KCC General Manager will advise the User of any personnel requirements for Facility supervision and any associated fees when completing the Facility Use Agreement.



- 5.7 Code of Conduct:** The User will ensure that his employees, volunteers, agents and Patrons comply with all applicable local, state and federal laws and policies including requirements set forth in the Facility Use Agreement or rules for the operation of the Facility. Illegal activity of any kind is prohibited and appropriate, respectful behavior is to be maintained at all times. Respect for the neighbors surrounding the Facility is required at all times. Those violating these requirements will be ejected from the Facility and jeopardize future use of the Facility by the User. If an individual(s) becomes too disruptive, Town personnel are duly authorized to order them to leave the Facility or to notify law enforcement. Facility Use Agreements can be revoked at any time, at the sole discretion of the Town, for violation of this provision and may result in immediate termination of the Function and forfeiture of all usage fees and deposits.
- 5.8 Service and Consumption of Alcohol:** The Service and Consumption of Alcohol at the KCC is strictly prohibited without an approved Application for the Service and Consumption of Alcohol as described more fully in Section 4.9 of this Policy. A User who wishes to serve alcohol must complete this Application and adhere to all additional requirements set forth in Section 7 – Special Provisions for the Service and Consumption of Alcohol of this Policy and those set forth in the Facility Use Agreement.
- 5.9 No Smoking:** The KCC is a smoke-free campus and as such smoking is strictly prohibited outdoors and indoors. This prohibition includes smoking as part of a performance.
- 5.10 Police and Security Services:** The Kittery Police Department is responsible for public safety and law enforcement on the KCC Campus. At the sole discretion of the KCC General Manager and Police Chief, dedicated police services may be required. If required, the Police Chief will determine the number of officers required for the Function. Use of private security services, such as those providing protection for an individual, require prior approval of the Police Chief. Coordination between the private security service and the Town is required and all procedures and protocols established by the Police Chief must be followed. Approval of the use of a private security detail does not supersede or replace the rights, obligations and responsibilities of the Town for maintaining public safety and law enforcement. The use of Town police services may, at the sole discretion of the KCC General Manager and Police Chief, still be required of the User even if the use of a private security service has been approved. The User is responsible for payment of Town police services which includes a “Special Detail” rate for each officer and a police vehicle surcharge. These rates are developed and maintained by the Kittery Police Department. Users are advised that the Special Detail rate is calculated at time and one-half per officer plus overhead and is subject to a minimum of four (4) hours. The KCC General Manager will advise the User of the total cost for police services while completing the Facility Use Agreement.
- 5.11 Public Safety:** The following provisions will be in full force and effect during the Facility Use Period in order to maintain safe operation of the Facility and/or safety of the public:
- (A) Interruption of Function:** The Town may cause the interruption of any Function, including presentations or performances in the interest of public safety.
  - (B) Safety Announcements:** The Town may make or require announcements to be made regarding emergencies and/or safety protocols at any time during the Facility Use Period, including before, during or after a presentation or performance.
  - (C) Facility Evacuation:** The Town, at its sole discretion, may require the evacuation of the Facility in the interest of public safety which may result in the termination of a Function. Should it become necessary to evacuate the Facility for a period of time, the User may retain possession of the Facility for a period equal to the original Facility Use Period at no additional charge, provided such time does not interfere with another User. If, at the sole discretion of the Town, it is not possible to extend the

Facility Use Period, the Facility Use Agreement will be terminated in accordance with Section 4.6 of this Policy.

- (D) Clear Access Maintained:** The User shall neither encumber nor obstruct the Facility sidewalks, stairs, exits, lobbies, hallways, aisles, nor allow the same to be obstructed or encumbered in any manner. Proper clearance must be maintained at all times to a width of 44-inches around all exits.
- (E) Fire/Safety Codes:** All sets, costumes, props, flame effects, flash pots, laser equipment, and any other materials used during a presentation or performance must conform to all applicable fire and safety codes required by the State of Maine and the Town. Fire prevention codes that prohibit smoking, flammable decorations, open flame, and explosive or flammable fluids, gases and compounds must be observed. The Town may require written evidence that all such codes have been met and that operators have the required licenses. The Town may deny the use of any material, item or special effect that presents a degree of risk that is inconsistent with or exceeds acceptable parameters for the safe operation of the Facility and/or safety of all Facility Patrons.
- (F) Hazardous Material:** The User will not bring onto the Facility any material, substance, equipment or object which is likely to endanger the life of, or cause bodily injury to, any person in the Facility or which is likely to constitute a hazard to the Facility without the prior approval of the KCC General Manager. The Town may refuse to allow any such material, substance, equipment or object to be brought onto the Facility or to require the immediate removal any such material, substance, equipment or object from the Facility if discovered.
- (G) Maximum Capacity:** The User will abide by any occupancy limits established for the different rooms in the Facility.

**5.12 Custodial Services:** Custodians are present during regular hours of operation of the KCC or by special arrangement. Custodians are agents of the KCC and are responsible for the supervision and maintenance of the Facility. Custodians are available to assist the User with questions, Facility problems and maintenance issues; however it is not the Custodians' responsibility to undertake tasks that are the responsibility of the User and/or any of the User's agents. Functions that occur outside of regular hours of operation, are of a certain nature or are large in scope may, at the sole discretion of the KCC General Manager, require custodial services to be paid for by the User. The KCC General Manager will advise the User of any additional custodial service requirements and associated fees during the process of completing the Facility Use Agreement.

**5.13 Cleaning the Facility:** General cleanup after a Function is the User's responsibility. Town personnel will be available to provide any cleaning products to assist User in returning the Facility to the same condition as it was prior to the Function; normal wear and use expected. Unless otherwise specified in the Facility Use Agreement, the User is not required to take down tables and chairs that belong to the Town. The following basic guidelines will assist the User in restoring the Facility to the condition it was received:

- The Facility, including portions of the Facility used exclusively by the User and common areas, must be left in a clean, secure and reasonable manner;
- Trash and recyclables must be put in the proper receptacles;
- Any signs, decorations, etc. put up by the User must be removed;
- Food, beverages, personal items, gifts, equipment, etc. that belong to the User, its agent, or patrons are to be removed from the Facility;
- Tables or similar surfaces must be cleared of debris and wiped down;

- If kitchen was used all surfaces and equipment such as stoves, sinks, microwaves, etc. that were used must be cleaned.
- If Town-owned dishes, serving utensils, etc. were used they must be cleaned and dried.
- Common use items made available to the User must be clean, in good repair and returned to the area from which they came.
- Any other items stipulated in the Facility Use Agreement or by the KCC General Manager

**5.14 Facility & Equipment Damage:** The User is responsible for any damage to the Facility and its equipment that exceeds normal wear and use whether caused by an intentional or an accidental act of the User or the User's agents, employees or Patrons.

**5.15 Security Deposit:** A Security Deposit is required to cover: any damage or disrepair that may occur to the Facility or Town-owned equipment; any cleaning expenses incurred if the User does not complete contractual cleaning requirements or when conditions are created during the Facility Use period that exceed the User's ability to adequately rectify; and to cover any Direct Expenses incurred by the Town in connection with use of Facility by the User. The Security Deposit is a refundable surcharge, separate from the rental fee; it is collected when the User executes the Facility Use Agreement. The amount of the Security Deposit ~~may vary based on the type and scope of Facility Use~~ is equal to a percentage of the total Facility Rental Fee. The KCC Board of Directors will establish, and periodically adjust, the percentage rate of the Security Deposit as outlined under Section 3.5. The KCC General Manager will advise the User of the Security Deposit requirements during the process of completing the Facility Use Agreement. Any waiver or reduction of the Security Deposit does not release the User from its obligation to pay for any damage or cleaning charges that the Town would otherwise be entitled. If no damage occurs during the Function, all cleaning obligations are met and any Direct Expenses have been paid the User will receive a refund for the entire amount of the deposit. If additional cleaning is required, damage occurred or the Town has incurred Direct Expenses in connection with use of Facility by the User, payment will be deducted from the Security Deposit. A Partial refund will be issued only after all expenses have been determined. Any refund due to the User will be issued in accordance with the process outlined in Section 4.11 of this Policy. If expenses exceed the deposit, the User will, within thirty (30) business days of notification from the Town, pay the excess cost.

**(A) Alcohol Surcharge:** A surcharge will be added to the Security Deposit for Functions that include the Service and Consumption of Alcohol. The purpose of this surcharge is to provide greater protection of the Facility and its equipment. The KCC General Manager will provide the amount of the surcharge during the application process.

**5.16 Damage/Cleaning Assessment:** Town personnel will conduct a preliminary assessment of the Facility at the end of the Function. At that time the User will be advised of any initial concerns and/or items that need to be addressed prior to the User leaving the Facility. The KCC General Manager will conduct a final assessment on the next business day or sooner if the portion of the Facility used by the User is scheduled for another Function. The User may elect, but is not required, to be present for the final assessment provided scheduling does not delay the assessment from occurring before the next use of said portion of the Facility. Assessment includes, but is not limited to the portions of the Facility used directly for the Function, common areas, parking areas, and facility grounds.

**5.17 Loss of User's Property:** The Town accepts no liability for any damage to or loss of User's property or that of the User's employees, volunteers, agents and Patrons.



- 5.18 No Joint Venture:** The Town will not be party to any agreement between the User and its agents. The User is solely responsible for the negotiation, maintenance, payment and resolution of any dispute of its contract for services or goods provided to the User by an agent other than the Town.
- 5.19 No Charging:** The User will not charge any expense to the Town or directly against anticipated box office revenues. The Town will not honor or pay any invoice or charge made by the User or its agent and the creditor will be referred back to the User for payment.
- 5.20 Advertising & Promotion:** The User may not advertise or promote a Function to be held at the Facility until a confirmed reservation is in place; see Section 4.4 of this Policy. User's advertising or promotion must in no way imply a partnership with or endorsement of the Function by the Town or KCC. Any use of the Town or KCC name except as specifically provided herein is expressly prohibited without the written consent of the Town. The Town reserves the right to assess penalties if these provisions are not adhered to, including termination of the Facility Use Agreement. The following guidelines apply to advertising and promotion for Functions held at the Facility:
- (A) Print Requirements:** All printed advertising or promotional materials including, but not limited to, posters, fliers, programs, handbills, or advertisements developed for mixed media must include the following information:
- 1. Facility Name:** All references to the Facility must be as the "Kittery Community Center" and listed prominently as the location of the Function.
  - 2. Star Theatre:** Functions using the theater must reference the theater as the "Star Theatre". The Town will provide the User with the Star Theatre logo and related information which must be included. When using the Star Theatre logo it is permissible to include the tagline "at Kittery Community Center" in order to satisfy both listing requirements.
  - 3. Facility/Box Office Contact Information:** The following information must be included:
    - **KCC Website:** [www.kitterycommunitycenter.org](http://www.kitterycommunitycenter.org)
    - **Facility Address:** 120 Rogers Road/Rte 236, Kittery, Maine
    - **Phone:** 207-439-3800
- (B) Radio/Television Requirements:** Advertising through radio or television may require an adaption of the print requirements listed under Section 5.20.A of this Policy, but should preserve the general intent of said section. While the use of the logo may not be appropriate the User will include the correct name of the Facility and, when applicable, the Star Theatre.
- (C) Facility Advertising Opportunities:** The Town shares your interest in achieving success for your Function. The following advertising and/or listing opportunities may be made available to the User at no additional charge:
- 1.** Listing of the Function in both digital and print Facility calendars provided a confirmed Facility Use Agreement is in place before any print deadlines.
  - 2.** Limited advertising space on Facility bulletin board(s).
  - 3.** Listing of the Function on the Facility roadside "marquee" during the week(s) covered by the Facility Use Period. This is limited to large Functions such as theater productions, performances, tournaments that are open to the public.

4. Use of "A" frame sign(s) at the Facility on the day of the Function.
5. Limited space for mounting banners provided by the User. Banners must be attached according to methods approved by the KCC General Manager.
6. Other advertising and promotional opportunities may arise and may be reviewed on a case-by-case basis.

**(D) Public Notice of Event Cancellation:** When cancellation or termination of a scheduled public event occurs, for whatever reason, the User must make a reasonable number of public announcements, at the User's own expense, concerning the cancellation as soon as possible following the decision to cancel or terminate. This includes, but is not limited to, newspapers, news departments at commercial television stations, and any radio stations on which advertisements for the event were run. The Town will assist with public notification of event cancellation by removing advertising materials from its Facility and calendars and when appropriate by posting notice of cancellation at the Facility.

**(E) Mailing Lists:** The Town will not make available for sale or use its mailing list(s) for advertising, promotion or other use by the User. The only exception to this provision is that the Town, upon request, will provide a list of Patrons who purchased tickets through the KCC Box Office for the User's Function.

**(F) Materials Distributed at Function:** All promotion and advertising materials including programs and other literature that is to be handed out to Patrons must be removed from the Facility by the end of the Facility Use Period.

**5.21 Conducting Sales or Special Services at the Facility:** Users who wish to use the Facility to make a presentation, offer advice, provide assistance, or offer for sale products or services that are of a financial or legal nature must comply with the following:

- (A)** Provide proof of a current and appropriate license or certification that establishes his/her/its right to offer such advice, services or products. This may include state bar certification, Insurance license, or Securities License.
- (B)** A disclaimer must be placed on all flyers, post-boards, promotional, and advertising material which explicitly states: "Not recommended, endorsed or affiliated with the Town or Kittery Community Center" in 12-point font or larger.
- (C)** Financial and/or legal paperwork may not be completed at the Facility without the express permission of the Town. Users are advised to conduct these matters at their normal business location.

The Town may expand this provision when at its sole discretion it believes the Town, the Facility and the public will be better served and protected by requiring such proof of licensing or certification prior to allowing the Function to be held the Facility.

**5.22 Additional Services/Equipment:** The KCC General Manager may make available to the User certain additional services and/or equipment to support the User's Function. Such services and equipment are optional and may require additional fees. The User may elect to accept such services and/or equipment during the application process.



**5.23 Animals:** Animals are not permitted in the Facility except under the following conditions: unless the animal is a service animal for an individual with a disability or is required for a performance or event that has been approved in advance by the KCC General Manager.

**(A) Service Animals:** As defined by the Federal Americans with Disabilities Act, Title II (State and local government services) "Service Animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities". Generally, Title II permits service animals to accompany people with disabilities in all areas where members of the general public are allowed to go.

**(B) Show Animals:** Animals that are required for a show, lecture, educational activity or other similar event require the advanced approval of the KCC General Manager. The animal must remain in the control of a qualified handler at all times while in the Facility. The Town reserves the right to require any documentation such as proof of vaccinations, etc. prior to approval.

**5.23.24 Special Use of Facility Kitchen:** The Town maintains all permits and/or licenses required by the State of Maine for operation of the kitchen for food to be prepared and served on the premises. A User who desires to use the kitchen to prepare food for consumption or sale off the premises is required by the State of Maine to maintain additional permit(s) and license(s). These are issued by the State directly to the individual (User) and are not the responsibility of the Town. The Town will work with the User in the event that the State requires a kitchen inspection in connection with the User's permitting/licensing process. The Town may require proof of such required permit(s) or license(s).

## Section 6 – Special Provisions for Performing Arts Events

**6.1 License/Permits/Copyrights:** The User shall obtain and pay the fee for all licenses and permits necessary to conduct operations arising from the use of patented, trademarked, franchised or copyrighted music, materials, devices, processes or dramatic rights used on or incorporated in the event. The Town may require evidence of such licenses being in effect, with licensing organizations such as ASCAP, BMI and SEAC. The User shall indemnify the Town against any question of use of any such material described above in accordance with the indemnification requirements set forth in this Policy.

**6.2 Recording and Broadcast:** The User agrees that any visual or audio recording and/or live or pre-recorded broadcast will comply with all appropriate permit or licensing requirements for subject(s) being recorded. In the event that a recording or live broadcast will occur during a performance(s) signage must be posted in advance to inform the public that they may be recorded during the performance.

**6.3 Backstage Access:** The User is responsible for arranging a system of backstage access control if desired. Such a system will not interfere with normal operation of the Facility and must be reviewed in advance by The KCC General Manager.

**6.4 Seat Kills:** If the KCC Box Office is being utilized, the User will notify the KCC General Manager as soon as possible if any of the seats will be unavailable for ticket sales because they are being used for equipment.

**6.5 Signed Contract for the Act:** The KCC General Manager may require a copy of the signed contract between the User and the act to be presented as part of the Facility Use Agreement. Portions of this signed contract concerning financial arrangements may be excised.

**6.6 Preparing & Restoring the Theater:** The following guidelines will assist the User in preparing the Theater for a specialized performances and for restoring the theater at the conclusion of the Facility Use Period:



**(A) Set Construction & Painting:** The Theater space is not intended to be used as a scene shop because of the damage to the facility and equipment such activities can cause. It also reduces the amount of time the theater is not actively serving its primary mission. Basic construction of platforms, stairs, doorways and flats, as well as prime and base coat painting are not to occur in the theater. Construction activities in the theater are limited to final stages of set construction and painting: Installation, assembly, finishing and/or covering of substantially pre-constructed units, and top coat detail and texture finish painting. is allowed in the Theater provided the User takes all reasonable precautions to protect the Facility from damage caused by such construction. Indoor construction is limited to the theater and may not be done in hallways, dressing rooms or other common areas in the Facility. For the purpose of this Policy, painting is considered a part of set construction. The User is required to protect floors, rugs, walls, curtains and equipment from any damage or staining caused by painting; this includes any painting done outdoors.

**(B) Restoration to House Standards:** The User is allowed to make changes to lighting and sound equipment provided such changes are done by a qualified technician and do not damage or permanently alter the lighting or sound systems. At the conclusion of performances the User must restore the lighting to the provided standard house lighting plot and restore the sound system to its standard house configuration. This restoration includes wiring for both the lighting and sound systems. The User may elect, at additional cost, to use the Town's theater technician(s) to return the lighting and sound systems to the house configurations. Use of Town theater technicians requires advance notice and approval to allow time to schedule the technician and ensure the theater is ready for the next User.

**(C) Scissor Lift:** The User ~~shall~~will have access to and permission to operate the Town's scissor lift for the purpose of working on lights and rigging in the theater provided there is a certified operator. If the User does not have a certified operator the Town will provide one and additional charges may apply.

**6.7 Rental Limitation for Set Construction:** In order to ensure that use of the Star Theatre for programming is maximized, the Town may limit additional rental time for set construction and related activities to no more than one extra half-week in advance of the first week's rental.

**6.8 Town Use of Star Theatre:** The Town reserves the right to use the Star Theatre for low impact programming, including, but not limited to, movies and lectures when the theater has been rented for a week or more. The Town will work with the User to schedule programming at a time that does not conflict with planned performances, set construction and rehearsals. The User is not entitled to a discount of rental fees as a result of such use of the Theatre by the Town though the Town will work with the User to reach a mutually beneficial arrangement. The Town will be responsible for any damage to the User's sets, props, or equipment that may occur during such use up to a dollar amount that does not exceed the total cost of the User's rental fee. The User is required to provide the Town with documentation to substantiate the type and extent of the damage as well as any costs associated with its repair and/or replacement.

~~6.6.9~~ **6.9 Inspection of Facility:** Upon completion of load-out and restoration of the theater to its house standards, the Town will conduct an inspection with the User to ensure that restoration is complete and that there is no damage or other items that must be addressed before the final financial settlement is completed.

## Section 7 – Special Provisions for the Service and Consumption of Alcohol



- 7.1 Limitation:** The Service and Consumption of Alcohol is hereby limited to beer and wine. This includes champagne ~~and~~, sparkling wines and hard cider, but expressly prohibits other types of alcoholic beverages.
- 7.2 Age Restriction & Carding Practices:** No person under the age of 21 years may possess, consume or serve alcoholic beverages. ~~Personnel serving alcohol are responsible for verifying the legal age of each person being served alcohol.~~ Maine law requires a licensee or licensee's employee or agent to verify the age of any person under 27 years of age by means of a reliable and valid photographic identification containing that person's date of birth before selling, giving or otherwise providing an alcoholic beverage. The Town requires a licensee or licensee's employee or agent to card anyone that orders alcohol who appears to be 35 years of age or younger in order to comply with Maine law. A licensee may refuse to serve liquor to any person who fails to display upon request a reliable and valid identification card as described above.
- 7.3 Functions Geared Toward Minors:** The service and consumption of alcohol is prohibited at any Function geared primarily toward minors.
- 7.4 Designated Areas:** The consumption of alcohol is restricted to the interior areas of the Facility designated in the Application. The User will ensure signs are posted indicating any alcohol-restricted areas. Maine law prohibits a patron from transporting and/or consuming alcohol outside of designated areas. Failure to follow this law is a Class E crime which could result in arrest and/or expulsion from the Facility.
- 7.5 Service of Alcohol:** Alcohol may be served only from areas designated in the Application. All alcohol containers, including kegs, barrels, casks or other containers must remain behind the serving area. Alcohol may only be served by personnel who possess a current certificate of completion of an alcohol server education course approved by the State of Maine. All alcohol must be served in paper or plastic containers or glassware provided by the Catering Service.
- 7.6 Hours of Service & Last Call:** In accordance with Maine State Law, alcohol may not be served between the hours of 1:00am and 5:00am Monday through Saturday and 1:00am and 9:00am on Sundays. The Service of Alcohol must cease at least 30-minutes prior to the end of the Function, as specified in the Application, to allow Patrons adequate time to prepare to leave.
- 7.7 Prohibited Activities:** The Service of alcohol at events may be advertised, but ~~No~~ marketing practices to encourage the consumption of alcohol will be allowed. Oversized drinks, contests, volume discounts or similar incentives are not permitted. The use of any device or game of chance ("drinking game") to aid directly in the Service and/or Consumption of Alcohol is strictly prohibited.
- 7.8 Qualified Catering Service:** A Qualified Catering Service is required for the Service of Alcohol. No other entity may provide Service of Alcohol, including the User, unless it is a Qualified Catering Service. A Qualified Catering Service is an individual, partnership, firm, association, corporation or other legal entity properly licensed for off-premise Service of Alcohol in accordance with the alcoholic beverages statutes of the State of Maine (MRS Title 28-A). Proof of such licensing must be submitted with the User's Application and must include copies of all required licenses and permits. The following rules and regulations for a Catering Service will be in full force and effect for the duration of the Function, including set-up and clean-up:
- (A) Permits:** The Catering Service must secure all required local and/or state permits that are necessary for the Service of Alcohol at the Facility. Such permits must be conspicuously posted for the duration of the Function.



- (B) Regulation:** The Catering Service must comply with all applicable local, state and federal laws for the Service of Alcohol as well as any applicable requirements set forth by this Policy, the KCC Facility Use Agreement and Application for the Service of Alcohol.
- (C) Liquor Liability:** The Catering Service must provide a liquor liability insurance policy as described more fully under Section 8 of this Policy.
- (D) Server Training:** All Catering Service personnel serving alcohol must possess a current certificate of completion of an alcohol server education course approved by the State of Maine. No person under the age of 21 years may serve alcohol.
- (E) Impairment:** All Catering Service personnel will refrain from consuming alcohol for the duration of the Function, including set-up and clean-up. Any personnel found or suspected of being under the influence or otherwise impaired shall be immediately relieved of duty and asked to leave the Facility.
- (F) Uniform:** All Catering Service personnel must, for the duration of the Function, wear a highly visible form of identification such as a button, badge, apron, uniform or other appropriate form of identification.
- (G) Loss of Catering Service Privileges:** Failure to comply with all applicable local, state and federal laws for the Service of Alcohol as well as any applicable requirements set forth by this Policy, the Facility Use Agreement and Application for the Service of Alcohol may result in the immediate suspension and/or long-term loss of Catering Service privileges at the KCC at the sole discretion of the Town.

**7.9 Transport & Storage of Alcohol:** The User and/or Catering Service are responsible for the purchase, transportation and secure storage of alcohol at the Facility. All alcohol and related containers must be disposed of properly and/or removed from the Facility immediately after the Function. Patrons are not allowed to furnish their own alcohol. This expressly prohibits "BYOB – Bring Your Own Bottle", or "Brown Bagging", or the use of a flask or any other method a by Patrons might use to transport alcohol into and/or out of the Facility. Failure to follow this law is a Class E crime which could result in arrest and/or expulsion from the Facility.

**7.10 Prevention:** It is the responsibility of the User and Catering Service to work together to prevent underage consumption of alcohol, to prevent Patrons from becoming intoxicated, to refuse service to intoxicated Patrons, and to facilitate the safe removal of Patrons from the Function, if their actions warrant removal. It is recommended that the User and Catering Service collectively take steps to encourage food and non-alcoholic beverage consumption to help reduce the risk of intoxication. Toward that end, the User must ensure that non-alcoholic beverages be made available for free or at a lower cost than any alcoholic beverages and an adequate supply of food be available for Patrons. The Service of Alcohol may be discontinued for any Patron or for an entire Function at the discretion of the User, Catering Service, or Town personnel.

**7.11 Safe Transportation:** The User will promote options for safe transportation of Patrons who consume alcohol at the Function.

## Section 8 – Insurance and Indemnification

**8.1 Insurance:** The following policies of insurance or pooled risk management coverage may be required of the User and/or its agent(s). The User and/or its agent(s) is responsible for procuring and maintaining at its own expense, such coverage for the duration of the Facility Use Period. Prior to the Function the User

must provide the Town with a certificate of insurance giving evidence of all required insurances including required amounts.

**(A) Commercial General Liability:** Coverage must provide a minimum of one-million dollars (\$1,000,000) per occurrence combined single limit for bodily injury (including death), personal injury and property damage (including loss of use). The Town, its officers, officials, agents, employees, volunteers and KCC Board of Directors must be listed on the certificate of insurance as additional insured.

**(B) Liquor Liability:** Any Function that includes the Service and Consumption of Alcohol must include a Liquor Liability Insurance policy. Coverage must provide a minimum of one-million dollars (\$1,000,000) each common cause. The Town, its officers, officials, agents, volunteers, employees, KCC Board of Directors and the User, its officers, officials, agents, volunteers and employees must be listed on the certificate of insurance as additional insured.

**(C) Other Insurance Requirements:** The Town may require that additional insurances be maintained by the User or the User's commercial agents, such as, but not limited to caterers. This may include, but is not limited to Workers Compensation and Automotive Insurance. The KCC General Manager will notify the User of any such requirements during the completion of the Facility Use Agreement.

**8.2 Waiver & Indemnification:** The User hereby understands and hereby agrees to assume all of the risk which may be encountered through the use of the Facility. To the fullest extent allowed by law, the User hereby releases and holds harmless the Town, its officers, its officials, agents, employees and KCC Board of Directors from any and all responsibility and legal liability for any property or personal injury damages to the User, its agents, employees or Patrons resulting from any claim arising from use of the Facility. User will indemnify, hold harmless, and defend them in any and all liability, actions, causes of actions, claims, expenses, and damages on account of any property or personal damages or injuries sustained by the participant which may arise out of and in connection with use of the Facility by the User, its agents, employees or Patrons.

User expressly agrees that this release, waiver and indemnity agreement is intended to be broad and inclusive in its terms and is to be interpreted as permitted by Maine law. If any portion hereof is held to be invalid or unenforceable, it is agreed that the remainder shall continue in full legal force and effect. This release contains the entire agreement between the parties hereto and the terms of this release are contractual and not a mere recital. User intends for this waiver, release and indemnity agreement to be binding upon its relatives, personal representatives, heirs and assigns.

This waiver does not release acts of gross negligence nor willful and wanton misconduct of any party.

User is advised, but not required, to seek legal counsel before accepting the terms of this waiver and indemnification provision.

**8.3 Subrogation:** To the extent of insurance proceeds actually received, and to the extent permitted by the party's insurance contract(s) the parties hereby waive any right of subrogation that such insurance companies may have against the Town or User.

**8.4 Security Bond/Deposit:** The Town may require the User to post a security bond or deposit in the form of cash or deposit in the form of certified check, or to arrange posting by a duly accredited bonding company.

## Section 9 – Governing Law, Severability, Amendment



- 9.1 Governing Law:** This Policy, and any rights and obligations provided herein and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Maine.
- 9.2 Severability:** If any one or more of the provisions contained in this Policy, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions of this Policy shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits or the remaining provisions hereof.
- 9.3 Amendment:** The KCC Board reserves the right to propose amendments to this Policy for consideration by the Kittery Town Council. The Kittery Town Council reserves the right to amend this Policy.

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## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

1   **Date:** November 17, 2015

2   **Responsible Individual:** Stephen A. Hynes Real Property Trust Agreement, Owner's Agent,  
3   Gary Beers

4   **Subject:** Open Space – Conservation Easement Cession Offer to the Town of Kittery

### 5   **EXECUTIVE SUMMARY:**

6   Stephen A. Hynes Real Property Trust Agreement has proposed a mobile home park expansion  
7   on Kittery Map 66 Lots 24 & 25, adjacent to the existing Yankee Commons Mobile Home Park  
8   on Idlewood Lane, presently under review by the Planning Board. Final approval and  
9   development would leave approximately 34.5 acres available offered as a gift to the Town and  
10   placed in a maintained conservation easement in perpetuity.

11   Such open space preservation easements are addressed in Kittery Town Code Title 16. This  
12   Report includes draft documents for Council consideration of an offer for the Conservation  
13   Easement Cession and Management Plan. Those documents were reviewed and endorsed by the  
14   Open Space Advisory Committee [ *At it's Nov. meeting, KOSAC decided to support and comment*  
15   *on that proposal.*]; and, an opinion from the Town Attorney as to the legal sufficiency of the  
16   documents would be necessary.

17   Agreement by Council that it is satisfied with the sufficiency of the written evidence is sought  
18   and concurrence for Council to give reasonable consideration, contingent on final plan approval,  
19   and presentation of final documents, for the Easement Cession and Management Plan.

### 20   **FACTS BEARING ON THE EQUATION:**

- 21       •   **Yankee Commons Location**
  - Development Plan Aerial View (*atch 1*)
  - Project Proposed Open Space and Easement Layout (*atch 2*)
  - Kittery Open Space Map (*atch 3*)
  - Kittery Vernal Pool 012 (*atch 4*)
- **Kittery Comprehensive Plan, Town Code, Open Space Map:**
  - Pursuant to Comprehensive Plan (*atch 5*)
  - Consistency with Title 16 (*atch 6*)
  - Kittery Title 16 Open Space Excerpts (*atch 7*)
- 22       •   **Maine Revised Statutes:**
  - 33 MRS §476-479 Conservation Easement (*atch 8*)

### 23   **BACKGROUND:**

24   Hynes purchased Yankee Mobile Home Parks in 1996, which includes the 120-lot park on Cutts  
25   Road (Yankee Green); the 64-lot and 12-apartment complex on Idlewood Lane (Yankee  
26   Commons); and, the two undeveloped parcels (Map 66 Lots 24 & 25) adjacent and abutting US  
27   Route 1 and Wilson Lane (50+ acres). Aerial site view and proposed project layout (*atch 1*); the  
28   proposed open space and easement layout (*atch 2*); and, the site locus on Kittery's Open Space  
29   Map are provided (*atch 3*).

30

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

Also noted in that area in the US Route 1 ROW and extending into adjacent parcels, is an aerial view of Kittery's MDEP Vernal Pool 012 (*atch 4*).

*NOTE: With no migratory species (e.g., wood frog, salamander), the USA Corps of Engineers requires only a 100' non-disturbance setback and that area will be considered for future easement consideration.*

The current expansion project was conceived in June of 2011. Initial cursory review indicated that 138 mobile home lots were readily possible under the net residential density standards. The project sketch plan was filed on 20 December 2011, proposing 83 home lots and a community center. A Maine Department of Transportation approved US Route 1 curb cut was centered on parcel 25 and crossed a wetland to access the rear (northerly) section.

The development design objectives were to be compliant with: (1) all Federal Housing & Urban Development (HUD) requirements; (2) Maine Manufactured Housing Board (MHB) park standards regulations; (3) Maine Department of Environmental (DEP) regulations (including Inland Fisheries & Wildlife); (4) USA Corps of Engineers regulations; and, (5) Town Code Title 16, Land Use and Development.

Recognizing that there are conflicts between state statutes (*30-A M.R.S. §4358, Regulation of manufactured housing*); Maine Manufactured Housing Board standards; and, Kittery Title 16, the primary plan objectives included efforts to be consistent with and pursuant to Kittery's Comprehensive Plan (*atch 5*); and, the concepts in Title 16 related to elderly housing, clustered residential development, and the mixed use zone (*atch 6*).

The Planning Board asked, during the initial site walk in January 2012, if it was possible to eliminate that curb cut/roadway, as Title 16 suggests there should be no more on Route 1 than absolutely necessary. In response to the Board's request, the plan was redesigned to provide access from Route 1 via Idlewood Lane. That resulted in a reconfiguration plan for Wilson Lane; a reduction of five lots to 78 (77 home lots and a community center); and, resulting in no more than 900sf wetland impact to reconfigure the access roadway to better avoid an emergent wetland.

The owner has committed to a plan Condition of Approval to maintain the housing as age-restricted (55+) and the project plans eight mixed use zone permitted uses. Those include a community garden; walking trail, active and passive recreation space. The Community Center facility will contain business and sales offices; meeting rooms; a medium size (125 seating) function room; and, an accessory maintenance shop/garage. There is also the potential for future provision for personal services, such as OT/PT and equipment; hair care; etc., although these must be viable for the provider.

Also noted is the net positive fiscal impact to the town. The project must pay for a Water District pumping station benefitting that system. Significant public safety impact and sewer betterment/impact fees will be paid. The owner will maintain on-site roads, street lighting, utility infrastructure, and provide curbside waste disposal for residents. With prospectively no school students the project foresees very limited financial cost (police-fire response, ambulance) to the Town. The estimated added valuation, when completed, would contribute more than \$230,000 annually in new taxes, along with the sewer department and water district added revenues.

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

As a “good neighbor” gesture, permanent Rectangular Rapid Flashing Beacons are proposed at applicant’s expense for the unsignalized crosswalks on US Route 1 in the outlet area to promote better pedestrian safety.

The current development plan was submitted to Maine Department of Environmental Protection (MDEP) for Site Location of Development review and approval, a process that includes professional staff review of multiple environmental regulations, including impacts to natural resources, storm water, groundwater, sensitive wildlife habitat, and scenic character. MDEP approved the plan as presented (including review and approval by Maine Department of Inland Fisheries & Wildlife) in June 2013.

The nearby vernal pool was assessed by the US Army Corps of Engineers to have non-migratory, fairy shrimp requiring only a 100’ non-disturbance area. MDEP’s 250’ area will have only 4.5% disturbed for the side slope of a stormwater filtration basin where 25% is allowed. All wetlands and a stream are mapped and categorized. Mapped wetland areas total approximately 6.6 acres, 0.8 acres of which are designated as emergent wetlands. 900sf of wetland would be impacted which requires a Corps of Engineers Category 1 permit requiring only start-work notice two weeks before commencement. The plan is currently under review by the Planning Board.

Title 16 open space requirements for mobile home parks are:

**16.8.12.3 Mobile Home Parks.** *O. Open space calculations are as follows: 1. For mobile home parks served by a public sewer, an area amounting to ten (10) percent of the total area devoted to individual lots must be set aside for open space and/or recreation.*

That result for the proposed plan open space requirement would be less than two acres. Title 16 requires developed open space to be designed and landscaped for the use and enjoyment of the park residents and maintained for their long-term use. Low- intensity recreation improvements (walking trail), picnic areas, and community garden plots are planned.

To the maximum extent possible, undeveloped open space must be left in its natural state. Contingent upon a final plan approval, the owner proposes to place all of the parcel’s undeveloped areas (approximately 34.5 acres) into a Conservation Easement with a supported future Management Plan.

Town Code Title 16 provisions that apply to this proposal are (*more at atch 7*):

**16.8.11.7 Open Space Dedication and Maintenance.**

*A. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.*

**16.9.2.3 Land Dedication.**

*Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition of approval, only when Council has agreed to the gifting.*

**16.10.7.2 Final Plan Application Submittal Content.**

*N. Open Space Land Cession Offers. Written offers of cession to the municipality of all public open space shown on the plan, and copies of agreements, or other documents showing the manner in which space(s), Code to which is reserved by the subdivider, are to be maintained.*

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

*O. Open Space Land Cession Offers Acknowledgement by Town. Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in Section 16.10.7.2O. Such written evidence does not constitute an acceptance by the municipality of any public open space referred to in Section 16.10.7.2O.*

### **16.10.9.1.3 Approval Not Acceptance of Property.**

*The approval by the Planning Board of a plan, a master site development plan or any other subsequent development plan does not constitute, nor is it evidence of any acceptance by the municipality of any street, easement, or other open space shown on the plan. When a park, playground, or other recreation area is shown on the plan, approval of the plan does not constitute an acceptance by the municipality of such areas. The Planning Board must require the plan to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the municipal officials covering future deed and Code, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such recreation area.*

### **CURRENT SITUATION:**

Of the 50+ acres in the parcels, the Net Residential Acreage is 755,454 sf, which would allow 151 lots at 5,000 sf. (Lot size allowed by Maine law – 755,000sf). We are proposing 78 lots which would take up 390,000 sf (leaving 8.4 unused residential area acres remaining) and propose no additional future development.

<b>Gross Land Area</b>	<b>2,185,044</b>	<b>sq. ft.</b>
Cemetery	-7,290	sq. ft.
Wetland/Floodplain	-1,128,513	sq. ft.
Street/Access (20%)	-209,848	sq. ft.
Open Space (10%)	-83,939	sq. ft.
<b>Net Residential Acreage</b>	<b>755,454</b>	<b>sq. ft.</b>
Possible Lots @ 5,000sf	151	each
Possible Lots @ 6,500sf	116	each
Proposed Lots	78	each

This table shows the approximately 34.5 acres available for this environmental protection consideration. The owner also proposes to maintain the conservation areas; permit public access; and, create/maintain a low-intensity recreation walking trail.

<b>Gross Land Area</b>	<b>2,185,044</b>	<b>sq. ft.</b>
Housing Lots	-390,000	sq. ft.
Street/Access (20%)	-209,848	sq. ft.
<b>Net Undeveloped</b>	<b>1,585,196</b>	<b>sq. ft.</b>
Cemetery	7,290	sq. ft.
Wetland/Floodplain	1,128,513	sq. ft.
Other Undeveloped	365,454	sq. ft.
<b>Conservation Easement</b>	<b>34.5</b>	<b>acres</b>

Essential Maine statute requirements are found in 33 MRS §476-479 Conservation Easement (atch 8).



## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

The agreement for the proposed offer of conservation easement cession (*encl 1*) is the MDEP standard and is consistent with, and pursuant to, Kittery's Comprehensive Plan and the Open Space Reservation concepts in Title 16, supporting the public benefit in the following areas:

- *The importance of the land by virtue of its size or uniqueness in the vicinity or proximity to extensive development or comprising an entire landscape feature;*
- *The likelihood that development of the land would contribute to degradation of the scenic, natural, historic or archeological character of the area;*
- *The opportunity for regular and substantial use of the land by the general public for recreational or educational use;*
- *The likelihood that the preservation of the land as undeveloped open space will provide economic benefit to the town by limiting municipal expenditures required to service development;*
- *The existence of a conservation easement, other legally enforceable restriction, or ownership by a nonprofit entity committed to conservation of the property that will permanently preserve the land in its natural, scenic or open character;*
- *Whether the land is maintained in accordance with criteria that are adopted under local ordinance that provide for preserving the integrity of historically important structures.*

### **Key Features of the Proposed Offer and Agreement are:**

Cession is an irrevocable offer of dedication of undeveloped land in Tax map 66 Lots 24 & 25 to be gifted to the Town. The offer continues indefinitely and may be accepted by the Town at any time, it being the intent that if said offer is to be accepted, it will be accepted, at the discretion of the Town Council, only upon delivery by Grantor of such other documents, certifications and securities as the Town requires pursuant to its Code for the acceptance of the dedication of public reserved open space lands.

### **Purpose:**

It is the purpose of the Easement to protect the property to safeguard biological diversity by protecting the environments and ecological processes including those described in the Whereas Clauses, that support viable populations of native plants, animals and other organisms, and to preserve and maintain the property as free from human disturbance, noise, artificial light and pollution as practicable.

### **Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:**

To ensure the continued character of the property, a number of acts and uses would be prohibited on, above, through or below the property. Notwithstanding the prohibitions, certain acts and uses may be permitted to the extent that do not materially impair the conservation values and interests of the property and are not inconsistent with the conservation easement purpose. Any such act or use must be part of an approved Management Plan. The exercise of any right reserved by the Grantor shall be in compliance with all applicable federal, state, and local laws.

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT

### Management Plan:

The depth and extent of inquiry of the Plan and its level of specificity will be appropriate to the proposed activity and any ecological disturbance which might occur as a result of the proposed actions. The Plan may consider the surrounding landscape context of the property as well as the property itself. It will include specific provisions for approval procedures, monitoring, evaluation, updates, notices, time frames and dispute resolution.

### CONCLUSION

#### Kittery Open Space Advisory Committee Caveats (*encl 2*)

"The easements need to be vetted by some legal authority versed in easements to guarantee that they accomplish the goal of preservation. Some individual/dept./or committee within the Town infrastructure should be designated as the steward/enforcer of the easement. There should be an appropriate sum of money placed in a trust controlled by the Town for any stewardship and enforcement actions that may arise. Lastly, there should be a management plan submitted by the applicant for the OS- especially the trail corridor- ie best management practices used in construction, rules for the use of the trail, enforcement responsibilities for those rules, signage at the property boundaries of the OS noting it designation, etc."

We would be pleased to work with that group or others, as Council may desire, to complete mutually agreeable covenants for this proposal. The proposed offer and agreements and final documents would need to be reviewed by the Town Attorney as required by Title 16, Section 8.11.7 (paid for by owner under Title 3 Applicant Service Agreement).

### REQUEST:

Council agree by motion that it is satisfied with the legal sufficiency of the written evidence documents; and, to give reasonable consideration to the Conservation Easement offer and Management Plan when presented, contingent upon final development plan approval.

### Enclosures

1. Draft Deed of Conservation Easement
2. Kittery Open Space Advisory Committee, e-mail 11-16-15

### Town Council Attachments (Previously provided to Planning Board)

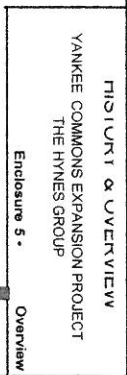
1. Development Plan Aerial View
2. Project Proposed Open Space and Easement Layout
3. Kittery Open Space Map 0328061
- 4a. Kittery Vernal Pool 012
- 4b. Vernal Pool 012 – Close up
5. Pursuant to Comprehensive Plan
6. Consistency with Title 16
7. Kittery Title 16, Open Space Excerpts
8. 33 MRS §476-479, Conservation Easement

## **REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE CONSERVATION EASEMENT**

### **202 SUGGESTED AGENDA ITEM & MOTION:**

203 **AGENDA:** The Kittery Town Council moves to discuss the offer of a conservation easement  
204 gift of land the Town by owner Stephen A. Hynes Real Property Trust Agreement.


205 **MOTION TO APPROVE:** The Kittery Town Council moves to affirm that it is satisfied with  
206 the legal sufficiency of the written evidence documents for a conservation easement of a portion  
207 of Kittery Map 66 Lots 24 & 25 to be gifted to the Town by Stephen A. Hynes Real Property  
208 Trust Agreement (Owner); and, to also affirm it will give reasonable consideration to the  
209 Conservation Easement offer and Management Plan when completed and presented for action;  
210 and, that such consideration is contingent upon a final development plan approval.



RTC - Attachment 1

1. THIS DRAWING SHOWS THE APPROXIMATE SIZE OF DISTURBANCE AREAS DURING GROUNDING AND THE TRAVEL WAY FOR CONSTRUCTION CENTER ON THE COUNCIL LANE TIE-UP PHOTOGRAPHY ON DECEMBER APRIL 2014 HAS BEEN ADJUSTED TO THE SURVEY BOUNDARY
2. TOTAL PARCELS AFFECTED BY DISTURBANCE PORTION NEAR TOLEWIP LINE LOCATION  
TOTAL PARCEL DISTURBANCE REVEALED
- |                          |            |
|--------------------------|------------|
|                          | 50 ACRES   |
| TOLEWIP LINE LOCATION    | 13 ACRES   |
| TOTAL PARCEL DISTURBANCE | 16.7 ACRES |
| REVEALED                 | 12.2 ACRES |
3. THE UNDISTURBED AREAS APPROXIMATELY 50+ ACRES MAY BE PLANTED IN A COMPENSATORY FOREST\*

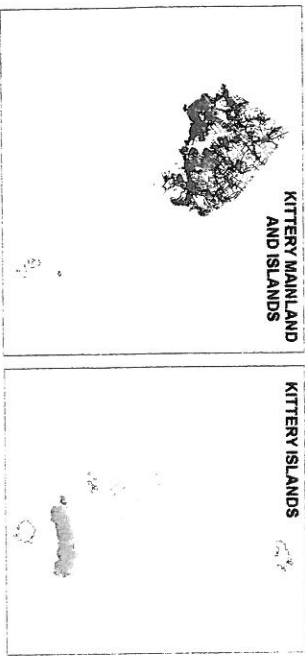
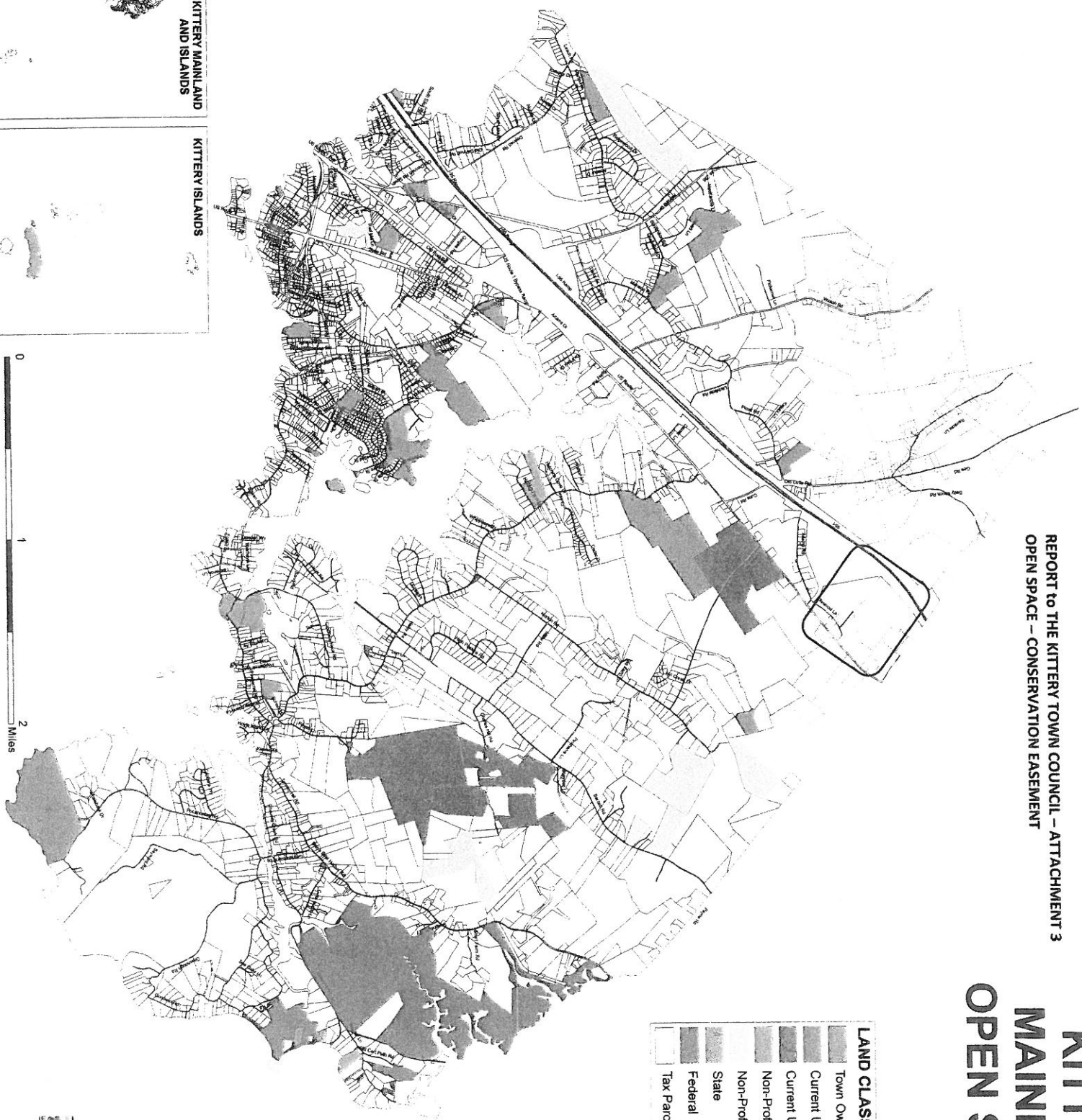
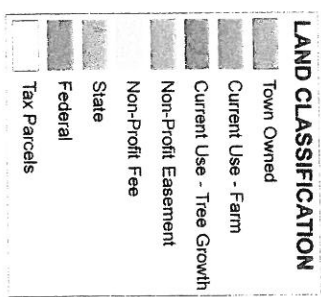
O.	REVISIONS	INT. DATE

		<b>HISTORY &amp; OVERVIEW</b> YANKEE CANNONS EXPANSION PROJECT - THE HYNES GROUP INDEMNITY CASE/ U.S. ROUTE 1 ATTERNEY, HANSE PREPARED FOR: <b>STEPHEN A. HYNES, TRUSTEE</b> <b>REAL PROPERTY TRUST AGREEMENT</b> MAILING ADDRESS 1471 BELLEVUE AVE. SUITE 20 WEST WINDSOR, BC. V0W 1A0	
SHEET NUMBER <div style="font-size: 2em; font-weight: bold;">EC5</div>	DATE 11/04/03 OPERATOR APPROVED SCALE 1"=150' SHEET TITLE ENCLOSURE 5	DRAWING NO. DATE	CALC. COMMENTS





# KITTERY MAINLAND OPEN SPACE





**Kittery 012**

PoolID	1602
ExportDate	4/9/2015
CenterLat	43.130524
CenterLong	-70.705087
CenterX	361314
CenterY	4776720
IFWPoolID	1602
SurveyDate	4/16/2009
ProjectID	85
Township	Kittery
SiteName	Kittery 012
ObsSiteName	VP-01
PoolMapMethod	Pool outline was delineated in the field with a GPS
GISSharing	Public
PubReview	Y
SVPStatus	SIGNIFICANT
Status_General	Significant
SHAPE	Point

Image modified 22 July 2015 to show approximate site boundaries

**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
ATTACHMENT 4b, KITTERY SIGNIFICANT VERNAL POOL 012 – 06/14/15 - CLOSEUP**

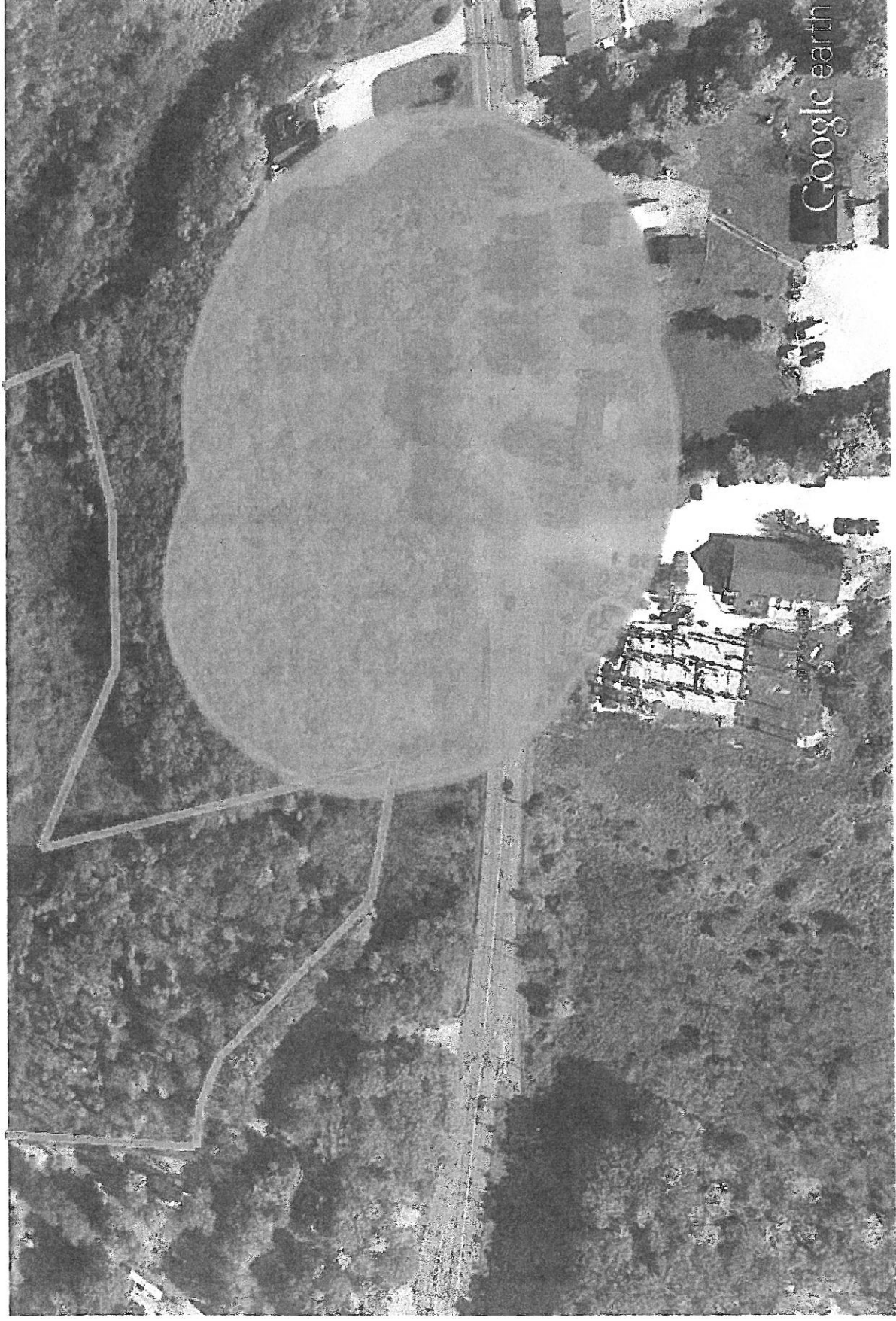


Image modified 22 July 2015 to show approximate site boundaries



**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 5**

**PURSUANT TO KITTERY COMPREHENSIVE PLAN**

**1999 Update of the Kittery Comprehensive Plan / Revised 11/10/00  
ADOPTED BY COUNCIL 3/25/02**

As is seen following, the project overall meets many goals of the current plan:

---

**SECTION C. NATURAL RESOURCES**

**12. GOALS AND POLICIES (pg 63)**

**State Goals:** To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas. (Growth Management Act)  
To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas. (Growth Management Act)

**Local Goals:**

To protect and improve the quality of the surface waters within Kittery.

To protect and preserve the quality and supply of groundwater resources.

To protect wetlands that have significant functional value and adjacent uplands from encroachment and degradation.

To manage the use of flood prone areas to reduce the risk of property and environmental damage.

To protect significant wildlife and fisheries habitat and critical and unique areas.

---

**SECTION I. NATURAL RESOURCES**

**6. GOALS AND POLICIES (pg 184)**

**State Goal:** To encourage and promote affordable, decent housing opportunities for all Maine citizens. (Growth Management Act)

**Local Goals:**

To encourage a diversity of housing to meet the needs of a wide range of residents.

To assure that as new housing is built in Kittery, at least 10% of the new units are affordable to lower or moderate income households.

## REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT Attachment 5

27 Pursuant to these goals, the Town's policies are:

28 2. The Town will continue to allow housing for the elderly to be built at higher densities than other types  
29 of housing in areas that are currently zoned Urban Residential and will explore providing an elderly  
30 housing density bonus in other areas that are residentially zoned and served by public sewerage in  
31 recognition of the lower impact that this type of housing has on the community.

32 4. The Town should work with nonprofit organizations and private developers to encourage that a balance  
33 is maintained in the supply of housing so that a range of lower, mid, and higher cost housing is available  
34 in Kittery including housing that is affordable to low and moderate income households.

---

### 35 SECTION K. RECREATION AND OPEN SPACE

#### 36 11. GOALS AND POLICIES (pp 209-211)

37 **State Goal:** To promote and protect the availability of outdoor recreation opportunities for all Maine  
38 citizens, including access to surface waters. (Growth Management Act)

#### 39 **Local Goals:**

40 To provide recreational facilities to adequately meet the needs of the Town's current population and to  
41 provide facilities for the growing population.

42 To maintain the current level of public access to the Atlantic Ocean and Piscataqua River and to expand  
43 and improve access as opportunities arise.

44 To maintain the rural, open landscape in designated nongrowth areas.

45 Pursuant to these goals, the Town's policies are:

46 1. The Town will continue to require that new subdivisions address the need for recreation and open space  
47 resulting from the development but the Town should revise its system to allow either the provision of on-  
48 site facilities or financial participation in off-site facilities through the payment of in-lieu of or impact  
49 fees.

50 4. The Town should work to develop interconnections between the existing trails and begin developing  
51 information about the nature trails within the Town and promoting usage of them for recreational  
52 purposes.

53 6. The Town should have the Planning Board and Conservation Commission develop an open space plan  
54 for the Town that identifies important areas that are suitable for open space and recreational use and  
55 establishes priorities for the protection or acquisition of a land. This plan should encourage the linkage of  
56 open spaces to create a continuous open space network that can also function as a contiguous wildlife  
57 corridor. The Town should continue to explore and support opportunities to purchase and acquire open  
58 space/conservation easements and land. The Town should also explore creating a land acquisition fund to  
59 be used for acquiring key open space that is identified in the plan that is threatened by change in  
60 ownership or potential development.

## **REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT Attachment 5**

7. The Town should explore requiring developers to contribute to a fund for the purchase of recreation and/or conservation land or creating an impact fee for this purpose.

8. The Town should support efforts by the Kittery Land Trust to privately acquire key parcels of open space.

9. The Town should actively work with the owners of large parcels of open land to educate them about non development options and to find ways that the owners' interests can be met without developing the land.

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### **SECTION M. HISTORIC AND ARCHAEOLOGICAL RESOURCES**

#### **5. GOALS AND POLICIES (pp 226-228)**

**State Goal:** To preserve the State's historic and archaeological resources. (Growth Management Act)

**Local Goals:**

To preserve the community's historic buildings, sites, and neighborhoods.

To assure that the community's archaeological resources are identified and protected from inadvertent damage or destruction.

To preserve and promote Kittery's historic and archaeological resources.

Pursuant to these goals, the Town's policies are:

4. As part of its development review process, the Town will require applicants for subdivision or site plan approval to document any identified historic resources that may be impacted by the project and to address the impact of the project on these resources.

**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 6**

**CONSISTENCY with TITLE 16**

**A. CONSISTENT with CLUSTERED DEVELOPMENT CONCEPTS**

***Article XI. Cluster Residential and Cluster Mixed-Use Development.***

***16.8.11.1 Purpose.***

*To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this Article is intended to encourage and allow new concepts and innovative approaches to housing/commercial development and environmental design so development will be a permanent and long-term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. Objectives include:*

- A. efficient use of the land and water, with small networks of utilities and streets; B. preservation of open space and creation of recreation areas;*
- C. maintenance of rural character, preserving farmland, forests and rural viewscales;*
- D. preservation of areas with the highest ecological value;*
- E. location of buildings and structures on those portions of the site most appropriate for development;*
- F. creation of a network of contiguous open spaces or 'greenways' by linking the common open spaces within the site and to open space on adjoining lands wherever possible;*
- G. reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;*
- H. preservation of historic, archaeological, and cultural features; and*
- I. minimization of residential development impact on the municipality, neighboring properties, and the natural environment.*

Cluster Development also known as conservation development is a site planning approach that is an alternative to conventional subdivision development. It is a practice of Low Impact Development that groups residential properties in a proposed subdivision closer together in order to utilize the rest of the land for open space, recreation or agriculture.

The benefits of cluster development as opposed to a conventional subdivision include: more preserved land for open/recreational space, a better setting for community building, possible local agriculture production, and an optimal arrangement in storm water management. Furthermore cluster development makes more ecological and economical sense.

By clustering residential properties there is less impervious surface and more natural drainage which reduces storm water flooding, and soil erosion. As well, strategic areas in the extra space can be used trap nutrients and suspend runoff. Economical benefits include having fewer roads, sewer/drainage, and electric/gas utility infrastructure to construct. Higher density means reduced travel time for services as well as the possibility for public transportation, increased bicycle usage, and pedestrianism. This subsequently would mean less petroleum usage, and Co2 emission. There is the possibility of having community-supported agriculture (CSA) which decreases food miles and supports local economy. Higher density also has implications for an increase in recreation and community.



**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 6**

**B. CONSISTENT with ELDERLY HOUSING CONCEPTS**

**16.2.2 Definitions.**

*Elderly housing means a residential use occupied principally by residents who are at least fifty-five (55) years of age (or in the case of a couple, at least one of whom is at least fifty-five) years of age) in which the accommodations are all dwelling units with private bathrooms and cooking facilities. Occupants of this residential use may also include handicapped individuals of any age. This housing does not provide a regular program of services to all of its residents although individual residents may arrange for the provision of services within the facility. Elderly housing includes very limited shared community space and shared dining and kitchen facilities but may include limited facilities for allied health services, social services, and personal services such as physical and occupational therapy, a beauty shop, recreational programs, elderly day care, and similar programs. The use of these facilities must be accessory to the primary residential use of the facility but may be open to nonresidents of the facility. Elderly housing does not include eldercare facilities that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units, or hospice units, or a nursing care or convalescent care facility that provides nursing services.*

Maine is aging and Kittery is increasingly gentrifying. A great many local homeowners of 30-40-50 years are approaching, or in, retirement with reduced income. They are finding taxes and upkeep of their highly valued property moving out of their reach. Reasonably affordable alternatives mainly exist in other towns some distance inland. Selling and moving elsewhere uproots folks from the town where they have a long history they would prefer to maintain.

With EnergyStar-certified quality-built homes and garages in the \$125-\$175K range, they could sell and live comfortably right in this town with all it means to them. Additionally, the project becomes something of a "walkable community" (4/10ths of a mile furthest to the Community Center; a half-mile to Rte 1; 3/4ths to Landmark Hill businesses; a mile to Three Buoys restaurant). With a community garden; community center group activities, meeting spaces, and personal services (potentially); and, walking trails in an out-of-the-way quiet setting.

**C. COMPLIANT for MIXED USES**

**16.3.2.13 Mixed Use MU.**

*".....A mix of uses on a site is desired and in some cases, required....."*

***Permitted Use***

*5. Business and professional offices;  
19. Personal services;  
20. Public open space or recreation;  
29. Accessory buildings and uses including minor or major home occupations;  
32. Specialty food and/or beverage facility.  
[Function Hall]*

***Special Exception Use***

*6. Housing for elderly as part of a mixed use project;  
11. Public utility facilities including substations, pumping stations, and sewage treatment facilities;*

**REPORT to THE KITTERY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
Attachment 6**

70 The project includes all the above listed uses. The Community Center facility will contain business and  
71 sales offices; meeting rooms; a medium size (125 seating) function room; and an accessory maintenance  
72 shop/garage. The prospect of personal services will be addressed (OT/PT and equipment; hair care; etc.),  
73 (must be viable for the provider). The non-developed 30+ acres is proposed to the Kittery Land Trust for  
74 a conservation easement with public access walking trails. The project must pay for a water department  
75 pumping station benefitting its system and may have to provide a similar system for the sewer  
76 department.

77 Also noted is the net positive fiscal impact to the town. Significant Public Safety Impact Fees will be  
78 paid. With the owner taking care of roads, water, sewer, street lighting, waste disposal, and so on; and, no  
79 school students. The estimated added valuation, when completed, would contribute more than \$200,000  
80 annually in new taxes, along with the sewer and water department added revenues.

**EXCERPTS RELATED TO OPEN SPACE – CONSERVATION EASEMENT**

**16.2 Definitions**

**Open space** means and includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural state. "Open space" does not include areas occupied by a building or a parking area except where required by the management plan in place to govern the open space and as approved by the Planning Board. Vegetated surfaces of outdoor commercial uses may be used to satisfy up to fifty percent (50%) of the required open space on any parcel except those parcels within a cluster residential or cluster mixed-use development. (Ordained 9/24/12; effective 10/25/12)

**Open Space, Common** means useable land within or related to a development, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development and may include such complementary structures, improvements and uses approved by the Planning Board. Such uses may include active or passive recreation or agriculture, where permitted. (Ordained 9/24/12; effective 10/25/12)

**Open Space, Reserved** means dedicated land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g. forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the Planning Board as part of cluster residential and cluster mixed-use developments. (Ordained 9/24/12; effective 10/25/12)

**Open Space, Public** means land accessible or dedicated for public use. (Ordained 9/24/12; effective 10/25/12)

**Wetland preservation** means the maintenance of an area of wetlands or adjacent upland so that it remains in a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation easements and land trusts.

**16.3.2.13 Mixed Use MU.**

**D. Standards.**

**8. Open Space Standards.**

Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Thirty-five percent (35%) of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space."

a. An objective of the open space standard is to encourage the integration of open space throughout the entire development and with the open space on adjoining properties in order to alter the pattern of commercial activity along Route 1. To this end, a minimum of twenty-five percent (25%) of the required open space must be located in the front fifty percent (50%) of the lot area closest to U.S. Route 1, or if not fronting Route 1, closest to the public street used to enter the lot.

b. The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

**c. Special Situations**

**i. Cases Where Integrating Open Space Would Require Exceeding the Open Space Standards.**

In cases where the topography, wetlands, and existing development on the lot dictates that more than seventy-five percent (75%) of the required open space be located outside the front portion of the lot, a percentage of the open space normally required in the front portion of the lot may be shifted to the rear portion of the lot in order to achieve the required amount of vegetated open space and not reduce the allowable developable area on the lot, provided minimum landscaping standards are satisfied.



**Article XI. Cluster Residential and Cluster Mixed-Use Development.**

**16.8.11.5 Application Procedure.**

All development reviewed under this Article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch Plan:

1. Calculations and maps to illustrate:

a. proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;

b. non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7);

c. net residential acreage and net residential density; and

d. open space as defined in Section 16.8.11.6.D.2 of this Article.

2. A map showing constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of thirty-three percent (33%), easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.

3. A written statement describing the ways the proposed development furthers the purpose and objectives of this Article, including natural features which will be preserved or enhanced. Natural features include, but are not limited to, moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites worthy of preservation.

4. The location of each of the proposed building envelopes. Only developments having a total subdivision or site plan with building envelopes will be considered.

B. An applicant with a project that includes proposed public open space must obtain Town Council acceptance for the public land or easement following Preliminary Plan approval. Town Council acceptance is contingent upon receipt of Final Plan approval by the Planning Board.

**16.8.11.6 Standards.**

E. Open Space Requirements:

1. Open space must contain at least 50% of the total area of the property, and no less than 30% of the total net residential acreage, as defined.

2. Total calculated open space must be designated as follows (See Open Space definitions Section 16.2):

a. Open Space, Reserved; b. Open Space, Common; and/or c. Open Space, Public.

3. The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.

4. Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the Planning Board.

5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover as identified in applicant's written statement. In the Business Park (BP) zone, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify the built and natural environments.

**RTC - KITTELY TOWN CODE TITLE 16 – LAND USE and DEVELOPMENT ZONING ORDINANCE, 2/28/15  
ATTACHMENT 7**

6. Open space should be in a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.

7. A portion of the open space should be in close proximity to other open spaces used for recreation (e.g. a common green, multi-purpose athletic field, gardens, and playgrounds).

**16.8.11.7 Open Space Dedication and Maintenance.**

A. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.

B. The open space(s) must be shown on the development plan with appropriate notation on the face thereof to indicate that:

1. The open space must not be used for future building lots; and

2. A part or all of the open space may be dedicated for acceptance by the Town.

C. If any, or all, of the open space is to be reserved for ownership by the residents and/or by commercial entities, the bylaws of the proposed homeowner's or similar governing association for commercial owners (in the Business Park zone), and/or the recorded covenants must specify maintenance responsibilities and be submitted to the Planning Board prior to approval. See subsection A above.

**D. Association Responsibilities.**

1. Maintenance: The homeowner's association or similar association for commercial owners is responsible for the maintenance of open space(s), and other common facilities unless and until accepted by the Town. The stormwater management system must be maintained in accordance with Section 16.8.8.2, Post- construction Stormwater Management. Associations must maintain adequate funds to defray these expenses. The Planning Board shall require an initial capital fund for associations to be paid by the developer to cover these expenses.

2. Inspection: Annually, by June 30, the developer or association must complete and submit to the Code Enforcement Officer a Maintenance Compliance Report on a form prepared by the Code Enforcement Officer certifying compliance with any open space use and protection requirements. Said report must be completed by a Maine licensed civil engineer or certified soil scientist.

E. Transition of Responsibility. The developer must maintain control of such open space(s) and be responsible for maintenance until development, sufficient to support any and all associations, residential or commercial, has taken place. Responsibility and authority must be clearly defined and described in the recorded covenants, and such information must be distributed to any and all associations in a timely manner so the transition of responsibilities is seamless.

**16.8.12.3 Mobile Home Parks.**

O. Open space calculations are as follows:

1. For mobile home parks served by a public sewer, an area amounting to ten (10) percent of the total area devoted to individual lots must be set aside for open space and/or recreation. Such space is to be accessible and usable by all residents of the park. Parking space, driveways and streets and buffer areas are not considered usable open space but community recreation buildings, pools and courts are considered as open space.

**RTC - KITTELY TOWN CODE TITLE 16 – LAND USE and DEVELOPMENT ZONING ORDINANCE, 2/28/15  
ATTACHMENT 7**

2. At least fifty (50) percent of the required open space must consist of land that is suitable for active recreation.

3. All developed open space is to be designed and landscaped for the use and enjoyment of the park residents and maintained for their long-term use. Plans for these areas must be submitted by the developer.

4. To the maximum extent possible, undeveloped open space must be left in its natural state. Improvements to make trails for walking and jogging or to make picnic areas are permitted.

5. The developer must submit, as part of the application, a copy of that portion of the proposed park rules and a plan which specify how the open space is to be used and maintained and what conditions apply to its use. The plan must specify the area to be dedicated open space or recreation.

6. Open space must be maintained and used for its approved purposes.

W. The owner or operator of a mobile home park is responsible for ensuring the maintenance of all park-owned structures, open space areas, roads and pedestrian ways/sidewalks. Park management must comply with state laws. Compliance with this Code does not exempt the park owner, developer, or manager from complying with other applicable local, state and federal codes and regulations. (Ordained 9/26/11; effective 10/27/11)

**16.9.2.3 Land Dedication.**

Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition of approval, only when Council has agreed to the gifting.

**16.9.3.12 Submission Requirements for a Wetland Alteration Application.**

C. Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for activities which, in total, affect or fill more than five hundred (500) square feet of wetlands.

5. For projects involving preservation of wetlands or adjacent uplands, a conservation easement must be conveyed or deed restriction imposed so that the parcel will remain undeveloped in perpetuity.

**16.10.7.2 Final Plan Application Submittal Content.**

N. Open Space Land Cession Offers. Written offers of cession to the municipality of all public open space shown on the plan, and copies of agreements, or other documents showing the manner in which space(s), Code to which is reserved by the subdivider, are to be maintained.

O. Open Space Land Cession Offers Acknowledgement by Town. Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in Section 16.10.7.2O. Such written evidence does not constitute an acceptance by the municipality of any public open space referred to in Section 16.10.7.2O.

**16.10.9.1.3 Approval Not Acceptance of Property.**

The approval by the Planning Board of a plan, a master site development plan or any other subsequent development plan does not constitute, nor is it evidence of any acceptance by the municipality of any street, easement, or other open space shown on the plan. When a park, playground, or other recreation area is shown on the plan, approval of the plan does not constitute an acceptance by the municipality of such areas. The Planning Board must require the plan to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the municipal officials covering future deed and Code, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such recreation area.



## Maine Revised Statutes

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### Title 33: PROPERTY

#### Chapter 7: CONVEYANCE OF REAL ESTATE

#### Subchapter 8-A: CONSERVATION EASEMENTS

##### §476. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Conservation easement.** "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property.

**2. Holder.** "Holder" means:

A. A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or

B. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

**3. Real property.** "Real property" includes without limitation surface waters.

**4. Third-party right of enforcement.** "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, nonprofit corporation or charitable trust, which, although eligible to be a holder, is not a holder.

##### §477. Creation, conveyance, acceptance and duration

**1. Conservation easement.** Except as otherwise provided in this subchapter, a conservation easement may be created, conveyed, recorded, assigned or partially released in the same manner as other easements created by written instrument. A conservation easement may be terminated or amended by the parties only as provided in section 477-A, subsection 2.

**2. Right or duty.** No right or duty in favor of or against a holder arises under a conservation easement unless it is accepted by the holder and no right in favor of a person having a 3rd-party right of enforcement arises under a conservation easement unless it is accepted by any person having a 3rd-party right of enforcement.

**3. Limitation.** Except as provided in this subchapter, a conservation easement is unlimited in duration unless:

A. The instrument creating it otherwise provides; or

B. Change of circumstances renders the easement no longer in the public interest as determined by the court as provided in section 477-A, subsection 2, paragraph B in an action under section 478.

## REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT ATTACHMENT 8

35 **4. Interest.** An interest in real property in existence at the time a conservation easement is created  
36 shall not be impaired by it unless the owner of the interest is a party to the conservation easement or  
37 consents to it.

38 **5. Entitled to enter land.** The instrument creating a conservation easement must provide in what  
39 manner and at what times representatives of the holder of a conservation easement or of any person  
40 having a 3rd-party right of enforcement shall be entitled to enter the land to assure compliance.

### 41 §477-A. Conservation easement standards

42 **1. Conservation values.** A conservation easement executed on or after the effective date of this  
43 section must include a statement of the conservation purposes of the easement, the conservation  
44 attributes associated with the real property and the benefit to the general public intended to be served  
45 by the restriction on uses of the real property subject to the conservation easement.

46 **2. Amendment and termination.** Amendments and termination of a conservation easement may  
47 occur only pursuant to this subsection.

48 A. A conservation easement executed on or after the effective date of this section must include a  
49 statement of the holder's power to agree to amendments to the terms of the conservation easement in  
50 a manner consistent with the limitations of paragraph B.

51 B. A conservation easement may not be terminated or amended in such a manner as to materially  
52 detract from the conservation values intended for protection without the prior approval of the court in  
53 an action in which the Attorney General is made a party. In making this determination, the court shall  
54 consider, among other relevant factors, the purposes expressed by the parties in the easement and the  
55 public interest. If the value of the landowner's estate is increased by reason of the amendment or  
56 termination of a conservation easement, that increase must be paid over to the holder or to such  
57 nonprofit or governmental entity as the court may designate, to be used for the protection of  
58 conservation lands consistent, as nearly as possible, with the stated publicly beneficial conservation  
59 purposes of the easement.

60 **3. Monitoring.** The holder of a conservation easement shall monitor the condition of the real  
61 property subject to the conservation easement at least every 3 years and shall prepare and retain a  
62 written monitoring report in its permanent records. The holder shall make available to the landowner,  
63 upon request, a copy of the monitoring report.

64 **4. Failure to comply.** Failure to comply with the requirements of subsection 1, subsection 2,  
65 paragraph A or subsection 3 does not invalidate a conservation easement otherwise entitled to the  
66 protections of this subchapter.

### 67 §478. Judicial actions

68 **1. Action or intervention.** An action affecting a conservation easement may be brought or  
69 intervened in by:

70 A. An owner of an interest in the real property burdened by the easement;

71 B. A holder of the easement;

72 C. A person having a 3rd-party right of enforcement; or

## REPORT to THE KITTELY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT ATTACHMENT 8

D. The Attorney General; except that the Attorney General may initiate action seeking enforcement of a conservation easement only when the parties designated as having the right to do so under the terms of the conservation easement:

- (1) Are no longer in legal existence;
- (2) Are bankrupt or insolvent;
- (3) Cannot be contacted after reasonable diligence to do so; or
- (4) After 90 days' prior written notice by the Attorney General of the nature of the asserted failure, have failed to take reasonable actions to bring about compliance with the conservation easement

**2. Intervention only.** An action affecting a conservation easement may be intervened in by a political subdivision of the State in which the real property burdened by the easement is located, in accordance with court rules for permissive intervention.

**3. Power of court.** The court may permit termination of a conservation easement or approve amendment to a conservation easement that materially detracts from the conservation values it serves, as provided in section 477-A, subsection 2, paragraph B, and may enforce a conservation easement by injunction or proceeding at law and in equity. A court may deny equitable enforcement of a conservation easement only when it finds that change of circumstances has rendered that easement no longer in the public interest or no longer serving the publicly beneficial conservation purposes identified in the conservation easement. If the court so finds, the court may allow damages as the only remedy in an action to enforce the easement.

**4. Confidentiality of records.** Documents and records obtained by the Attorney General, which would otherwise not legally be subject to public disclosure, may be shared with other public agencies but must be held as legally confidential under Title 1, section 402, unless disclosed in the course of a public proceeding in court.

No comparative economic test may be used to determine under this subchapter if a conservation easement is in the public interest or serves a publicly beneficial conservation purpose.

### **§479. Validity**

A conservation easement is valid even though:

**1. Not appurtenant to interest in real property.** It is not appurtenant to or does not run with an interest in real property;

**2. Assigned to another holder.** It can be or has been assigned to another holder;

**3. Not recognized at common law.** It is not of a character that has been recognized traditionally at common law;

**4. Negative burden.** It imposes a negative burden;

**5. Affirmative obligations.** It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

**6. Benefit does not touch or concern real property.** The benefit does not touch or concern real property;

**7. No privity of estate or of contract.** There is no privity of estate or of contract;

**8. Does not run to successors or assigns.** It does not run to the successor and assigns of the holder;

**REPORT to THE KITTY TOWN COUNCIL – OPEN SPACE – CONSERVATION EASEMENT  
ATTACHMENT 8**

**9. Acquired for tax delinquency.** A lien has been established for property tax delinquency under Title 36, section 552, or title to the real property subject to the conservation easement has been acquired by procedures for enforcement and foreclosure of delinquent taxes under Title 36, chapter 105, subchapter 9; or

**10. Merger.** The title to the real property subject to the conservation easement has been acquired by the holder, unless the holder, with the consent of any 3rd party with rights of enforcement, replaces the conservation easement with legally binding restrictions under a conservation easement or declaration of trust at least as protective of the conservation values of the protected property as provided by the replaced easement.

**§479-A. Applicability**

**1. Interest created after effective date.** This subchapter applies to any interest created after its effective date which complies with this subchapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

**2. Conservation easement created before effective date.** This subchapter applies to any conservation easement created before the effective date of this subchapter if the conservation easement would have been enforceable had it been created after the effective date of this subchapter, unless retroactive application contravenes the Constitution of Maine or the United States Constitution.

**3. Subchapter does not invalidate interest.** This subchapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under other laws of this State.

**§479-B. Uniformity of application and construction**

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the subchapter among states enacting it.

**§479-C. Conservation easement registry**

A holder of a conservation easement that is organized or doing business in the State shall annually report to the Department of Agriculture, Conservation and Forestry the book and page number at the registry of deeds for each conservation easement that it holds, the municipality and approximate number of acres protected under each easement and such other information as the Department of Agriculture, Conservation and Forestry determines necessary to fulfill the purposes of this subchapter. The filing must be made by a date and on forms established by the Department of Agriculture, Conservation and Forestry to avoid duplicative filings when possible and otherwise reduce administrative burdens. The annual filing must be accompanied by a \$30 fee. The Department of Agriculture, Conservation and Forestry shall maintain a permanent record of the registration and report to the Attorney General any failure of a holder disclosed by the filing or otherwise known to the Department of Agriculture, Conservation and Forestry. The fees established under this section must be held by the Department of Agriculture, Conservation and Forestry in a nonlapsing, special account to defray the costs of maintaining the registry and carrying out its duties under this section.





OFFICE OF THE TOWN CLERK  
TOWN OF KITTERY, MAINE

RECEIVED  
SEP 16 2014

200 Rogers Road, Kittery, ME 03904 BY: 10:30 AM  
Telephone: (207) 439-0452 Fax: (207) 439-6806  
website: [www.kittery.org](http://www.kittery.org)

**APPLICATION FOR APPOINTMENT TO TOWN BOARDS**

NAME: William E. Pike

RESIDENCE: 4 BARTLETT RD KITTERY VT

MAILING (if different) \_\_\_\_\_

E-MAIL ADDRESS: BB3GSP@COMCAST.NET PHONE #: (Home) 475 8121 (Work) \_\_\_\_\_

**Please circle your choices and list in order of priority by marking 1,2,3, etc.:**

Board of Appeals  
Conservation Commission  
Economic Development Comm.  
Recycling Scholarship Selection Comm.  
Parks Commission  
Port Authority  
Personnel Board

Board of Assessment Review  
Mary Safford Wildes Trust  
Shellfish Conservation Committee  
Community Center Bldg. Comm./Rec. Comm.  
Open Space Committee  
Planning Board  
Other \_\_\_\_\_

EDUCATION/TRAINING: High School

RELATED EXPERIENCE (Including other Boards and Commissions) \_\_\_\_\_

PRESENT EMPLOYMENT: RETIRED

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY?: ☒ Yes ☐ No

ANY KNOWN CONFLICT OF INTEREST: NONE

REASON FOR APPLICATION TO THIS BOARD: FEEL BOARD NEEDS HELP

I HAVE ☒ / HAVE NOT ☐ ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

SIGNATURE OF APPLICANT

DATE

9-16-14

**TOWN OF KITTERY**  
**POLICY ON TREASURER'S DISBURSEMENT WARRANTS**  
**FOR MUNICIPAL EMPLOYEE WAGES & BENEFITS**

Purpose: This policy allows designated municipal officers, acting on behalf of the full board of municipal officers, to review, approve, and sign municipal treasurer's disbursement warrants for wages and benefits only.

This policy is in addition to, not in lieu of, majority power. Nothing in this policy is intended to replace the authority of the full board of municipal officers, acting by majority vote, to act on any treasurer's warrant, including warrants for wages and benefits.

Delegation of Authority: Pursuant to Title 30-A, M.R.S., Section 5603(2)(A), the following authority is granted with respect to treasurer's disbursement warrants for municipal employee wages and benefits only.

Current municipal officers: The municipal officers in office at the time of execution of this policy are: Gary Beers; Frank L. Dennett; Jeffrey Thomson; Judy Spiller; Kenneth Lemont; Russell White and Charles Denault. During weeks when no regular Council meeting is scheduled, either **Jeffrey Thomson** or **Russell White** or **Gary Beers**, acting alone may review, approve, and sign such warrants.

Effective Date: This policy becomes effective on the date indicated below.

Copies: The Chair of the municipal officers will furnish copies of this policy to the municipal clerk and municipal treasurer. If the clerk and treasurer are the same person, a copy shall nonetheless be provided to that person in each capacity.

Lapse: **This policy lapses November 30, 2016, if not sooner amended or canceled.**

Renewal: This policy shall be renewed annually, in November after municipal elections. Thereafter, it may be amended at any time.

Reminder: If the municipal treasurer is an appointed official, the treasurer shall remind the municipal officers to consider renewing this policy annually before it lapses. If the municipal treasurer is an elected official, the treasurer is requested to provide such an annual reminder.

Original: The Chair of the municipal officers will maintain the original of this policy on file unless the municipal clerk is an appointed official, in which case the clerk shall maintain it on file, if requested to do so by the Chair.

Dated: November 23, 2015:

MUNICIPAL OFFICERS:


**TOWN OF KITTERY**  
**POLICY ON TREASURER'S DISBURSEMENT WARRANTS**  
**FOR MUNICIPAL EXPENSES**

Purpose: This policy allows designated municipal officers, acting on behalf of the full board of municipal officers, to review, approve, and sign municipal treasurer's disbursement warrants for municipal expenses.

This policy is in addition to, not in lieu of, majority power. Nothing in this policy is intended to replace the authority of the full board of municipal officers, acting by majority vote, to act on any treasurer's warrant.

Delegation of Authority: Pursuant to Title 30-A, M.R.S., Section 5603(2)(A), the following authority is granted with respect to treasurer's disbursement warrants for municipal expenses.

Current municipal officers: The municipal officers in office at the time of execution of this policy are: Gary Beers; Frank L. Dennett; Jeffrey Thomson; Judy Spiller; Kenneth Lemont and Charles Denault. During weeks when no regular Council meeting is scheduled, either **Frank Dennett** or **Gary Beers** or **Kenneth Lemont** acting alone may review, approve, and sign such warrants.

Effective Date: This policy becomes effective on the date indicated below.

Copies: The Chair of the municipal officers will furnish copies of this policy to the municipal clerk and municipal treasurer. If the clerk and treasurer are the same person, a copy shall nonetheless be provided to that person in each capacity.

Lapse: **This policy lapses November 30, 2016, if not sooner amended or canceled.**

Renewal: This policy shall be renewed annually, in November after municipal elections. Thereafter, it may be amended at any time.

Reminder: If the municipal treasurer is an appointed official, the treasurer shall remind the municipal officers to consider renewing this policy annually before it lapses. If the municipal treasurer is an elected official, the treasurer is requested to provide such an annual reminder.

Original: The Chair of the municipal officers will maintain the original of this policy on file unless the municipal clerk is an appointed official, in which case the clerk shall maintain it on file, if requested to do so by the Chair.

Dated: November 23, 2015:

MUNICIPAL OFFICERS:

_____	_____
_____	_____
_____	_____
_____	_____

**TOWN OF KITTERY**  
**POLICY ON GENERAL DISBURSEMENT WARRANTS**  
**FOR EDUCATIONAL EXPENSES**

Purpose: This policy allows designated municipal officers, acting on behalf of the full board of municipal officers, to review, approve, and sign School Disbursement Warrants for educational expenses.

This policy is in addition to, not in lieu of, majority power. Nothing in this policy is intended to replace the authority of the full board of municipal officers, acting by majority vote, to act on any treasurer's warrant.

Delegation of Authority: Pursuant to Title 30-A, M.R.S., Section 5603(2)(A), the following authority is granted with respect to the general disbursement warrants for educational expenses.

Current municipal officers: The members in office at the time of execution of this policy are: Gary Beers, Frank L. Dennett; Jeffrey Thomson; Judy Spiller; Kenneth Lemont; Russell White and Charles Denault. During the weeks when either no regular Council meeting is scheduled or the Council meeting is held on a Wednesday evening because of a Monday holiday, either **Kenneth Lemont** or **Jeffrey Thomson** or **Judy Spiller**, acting alone may review, approve and sign the general disbursement warrants for educational expenses, having been duly approved, and signed, by the Superintendent of Schools and a majority of the members of the School Committee.

Effective Date: This policy becomes effective on the date indicated below.

Copies: The Chair of the Municipal Officers will furnish copies of this policy to the municipal clerk and municipal treasurer. If the clerk and treasurer are the same person, a copy shall nonetheless be provided to that person in each capacity.

Lapse: **This policy lapses November 30, 2016, if not sooner amended or canceled.**

Renewal: This policy shall be renewed annually, in November after municipal elections. Thereafter, it may be amended at any time.

Reminder: If the municipal treasurer is an appointed official, the treasurer shall remind the municipal officers to consider renewing this policy annually before it lapses. If the municipal treasurer is an elected official, the treasurer is requested to provide such an annual reminder.

Original: The Chair of the Municipal Officers will maintain the original of this policy on file unless the municipal clerk is an appointed official, in which case the clerk shall maintain it on file, if requested to do so by the Chair.

Dated: November 23, 2015:

MUNICIPAL OFFICERS:

\_\_\_\_\_  
\_\_\_\_\_  
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**TOWN OF KITTERY**  
**SCHOOL DEPARTMENT'S POLICY ON DISBURSEMENT WARRANTS**  
**FOR SCHOOL EMPLOYEE WAGES AND BENEFITS**

Purpose: This policy allows designated School Committee members, acting on behalf of the full School Committee, to review, approve, and sign School Department disbursement warrants for wages and benefits only.

This policy is in addition to, not in lieu of, majority power. Nothing in this policy is intended to replace the authority of the full School Committee, acting by majority vote, to act on any treasurer's warrant, including warrants for wages and benefits.

Delegation of Authority: Pursuant to Title 30-A, M.R.S., Section 5603(2)(A)(2), the following authority is granted with respect to disbursement warrants for School employee wages and benefits only.

Current School Committee members: The members in office at the time of execution of this policy are: John Driscoll; Kimberly Bedard; Julie D. Dow; Ann Gilbert; Jonathan Rivers, Gavin Barbour and David Batchelder. **David Batchelder** will be the primary School Committee member who will review, approve and sign such warrants, with **Kimberly Bedard** as alternate in the absence of David Batchelder. In the absence of both David Batchelder and Kimberly Bedard, **Julie Dow** will be the alternate who will review, approve and sign such warrants.

Effective Date: This policy becomes effective on the date indicated below.

Copies: The Chair of the School Committee will furnish copies of this policy to the municipal clerk and municipal treasurer. If the clerk and treasurer are the same person, a copy shall nonetheless be provided to that person in each capacity.

Lapse: **This policy lapses November 30, 2016, if not sooner amended or canceled.**

Renewal: This policy may be renewed at any time before its lapse. Thereafter, it may be readopted at any time. Any renewal is valid for one year from its effective date, unless a sooner date of expiration is specified.

Reminder: If the municipal treasurer is an appointed official, the treasurer shall remind the municipal officers and School Committee to consider renewing this policy annually before it lapses. If the municipal treasurer is an elected official, the treasurer is requested to provide such an annual reminder.

Original: The Chair of the School Committee will maintain the original of this policy on file unless the municipal clerk is an appointed official, in which case the clerk shall maintain it on file, if requested to do so by the Chair.

Dated: November 23, 2015:

MUNICIPAL OFFICERS:

_____	_____
_____	_____
_____	_____
_____	_____